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HUMAN RIGHTS COMMITTEE

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 40 OF THE COVENANT

Fourth periodic reports of States parties due in 1995

Addendum

ITALY*

[30 October 1996]

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* For the third periodic report submitted by Italy, see CCPR/C/64/Add.8; for its consideration by the Committee, see CCPR/C/SR.1329 to SR.1330 and Official Records of the General Assembly, Forty-ninth Session, Supplement No. 40 (A/49/40), paras. 271-290.

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Introduction

1. This report of the Italian Government on the International Covenant on Civil and Political Rights is intended, under the terms of the Covenant, to cover the period 1993-1995. However, since the previous report had been updated and discussed in July 1994, this report has been updated to June 1996.

2. The report has been prepared, as usual, by the Interdepartmental Committee for Human Rights, established in 1978 by the Ministry for Foreign Affairs; the members of this Committee are representatives of the departments most closely involved with the matters covered by the Covenant; representatives of some non-governmental organizations and of experts.

3. On 11 and 12 July 1994 the Human Rights Committee examined Italy's third periodic report.

4. The previous report, as well as written answers to questions raised by the Committee and the oral presentation and discussion, have given a full inside view of the effective respect and application of the principles and the rules of the Covenant.

5. In the period of time taken into consideration by the fourth report the Italian political scenario has undergone major and radical changes. Political elections in 1994 led to the setting-up of a centre-rightist Government. After the end of the so-called First Republic, many new political coalitions entered into the new Government, among these Forza Italia, Alleanza Nazionale and the Lega Nord. However, the new Government, considered as the first Government of the Second Republic, had a very short life, for various reasons, perhaps one of the most determining factors being the withdrawal of support by the Lega Nord. A new Government was then set up, with the participation of independent experts, and new elections held in April 1996. The main political parties grouped themselves into two fronts: the centre-rightist Polo delle Libertà (formed by Forza Italia, Alleanza Nazionale, Centro Cristiano Democratico e Unione Democratico Cristiana), and the centre-leftist Ulivo (formed mainly by the Partito Democratico della Sinistra, and by the Partito Popolare Italiano with the external support of Rifondazione Comunista). The latter coalition was successful in gaining the majority of votes and therefore was called to form the new Government. The new Government also includes high-level quasi-independent experts, who participate owing to their specific competence in some key sectors.

6. Soon after the 1996 elections the Lega Nord advocated the separation of Italy into two entities: the "Padania", which would be formed by most of the northern regions, and the rest of Italy, which would maintain its identity on the residual part of the territory.

7. The suggestions and preoccupations expressed by the Human Rights Committee in its final conclusions on the third periodic report have been the object of a thorough examination by the Italian Government and by the branches of the administration more directly concerned with the different aspects of human rights.

8. Italy has ratified the Second Optional Protocol to the Covenant, while all necessary steps and procedural acts have been undertaken in order to withdraw the reservations initially made by Italy to the Covenant.

9. The competent authorities and the Parliament are studying the implications of the procedures necessary to put into effect two of the most relevant recommendations of the Human Rights Committee, i.e. those concerning the institution of the ombudsman and the insertion of the crime of torture in the Italian criminal system. Various bills have been presented to Parliament, but it appears that there is still a long way to go before their enactment.

10. The Human Rights Committee has also expressed some concern on the harmonization of the activities carried out by the local ombudsmen, at regional or communal level. It may be worth while to point out that some informal procedures of consultation have been put into practice by various ombudsmen's offices. The aim is to exchange experiences and to try to set up a common line of action.

11. The Human Rights Committee had also shown some concern regarding the new discipline of preventive custody. The commentary to article 9 of the Covenant in this report gives detailed information on the improvements that have been adopted, both in legislation and in practice, for better treatment of persons being detained.

12. In the field of mass media, a recent judgement of the Constitutional Court has stated that State or privately owned companies are not allowed to have more than two TV channels nationwide.

13. The Human Rights Committee seems to accept the view that, in Italy, only "linguistic" minorities are protected. This is not so. As illustrated in previous reports, it is true that the legislative language concerning minorities makes express reference, in the headings of relevant laws, to linguistic minorities. This is due to the historical and legal heritage. However, in fact, the expression "linguistic minorities" in the Italian legislation covers all forms of minorities, including ethnic, religious, racial and other minorities.

14. Finally, various initiatives have been undertaken with the view to strengthening the mechanisms of protection against all forms of intolerance and discrimination and to improve the condition of women. Details of these initiatives can be found in the commentaries to the relevant articles of the Covenant.

Article 2

Reform of private international law

15. The Italian system of private international law was reformed by Law No. 218 of 31 May 1995. The previous system was governed by articles 17-31 of the provisions implementing the Civil Code. These have largely been overtaken by events, having been in force since 1865, and superseded by certain provisions in the same Code (particularly articles 115, 116, 2505-2509) and the Maritime Code (arts. 4-13), and lastly,

by articles 2, 3, 4 and 796-805 of the Code of Civil Procedure. Adopting a modern private international law approach to include matters relating to international civil procedural law, Law No. 218/95 deals with the issues of the applicable law as well as jurisdiction and the enforcement of foreign judgements and other measures issued by foreign authorities, thereby carrying out a comprehensive reform of provisions relating to conflict of laws and jurisdiction.

16. In short, this Law contains five titles. The first (sects. 1-2) contains general provisions; the second (sects. 3-9) relates to Italian jurisdiction; the third (sects. 13-63) relates to the applicable law and deals with the rights of natural and legal persons, family relations, succession, real rights, donations and obligations; the fourth (sects. 64-71) deals with the enforcement of foreign judgements and measures; and the fifth (sects. 72-74) provides a transitional provision and a repealing clause referring to incompatible provisions and rules.

Relations between Italian and ecclesiastical jurisdiction

17. On this issue, judgement No. 1824 of 13 February 1993 is worth recalling. With this judgement the Joint Divisions of the Supreme Court of Cassation ruled that now that the jurisdiction reserved to ecclesiastical courts has been lifted, Italian courts had jurisdiction to rule on the nullity of marriages solemnized under the Concordat.

Change of surname

18. The recent Constitutional Court Judgement No. 13 of 3 February 1994 declared article 165 of Royal Decree No. 1238 of 9 July 1939 (Organization of the Civil Registry) to be unconstitutional by failing to make provision, in cases where rectification to a Civil Registry entry for reasons beyond the control of the individual concerned entails a change of surname, for that individual to request the court to allow him to retain the original surname when it is considered to be an autonomous distinctive sign of that person's identity.

Education and information on human rights

19. Among the most recent activities to disseminate information on human rights and include this as a subject in school curricula in Italy, there is the work of the Committee for the Protection of Human Rights of the Accademia Nazionale dei Lincei. Since 1991 this committee has conducted a survey of education and information on human rights, with specific reference to ethnical prejudices in Italian schools and universities, and among such professions as the judiciary, the diplomatic service, the armed forces, the police, and the public at large.

20. The results of the Accademia Nazionale dei Lincei survey for the benefit of all the relevant government departments and agencies and the two houses of Parliament have been published under the title "Report on human rights education and information in Italy". In addition to containing the texts of the main international instruments on this subject, including the Universal Declaration of Human Rights, the UNESCO Recommendation concerning Education

for International Understanding, Cooperation and Peace and Education relating to Human Rights and Fundamental Freedoms and the 1950 Council of Europe Convention for the Protection of Human Rights and Fundamental Freedoms, the Report also makes recommendations for schools and universities concerning, inter alia, teacher training and refresher courses, and for devoting more attention to teaching human rights in schools and universities with specific reference to the Arts and Science Faculties, educational institutions for journalists and in the media.

21. Then there is the contribution made by the Italian Red Cross. In addition to its own institutional work of first aid, social welfare, assistance to refugees and other vulnerable classes, in recent years the Italian Red Cross has made enormous efforts, particularly to educate young people against all forms of prejudice and intolerance, through a widespread educational campaign and disseminating humanitarian international and human rights law.

22. Some of the most recent and important activities carried out in this area by the Italian Red Cross include: (a) organizing two camps on Education in Democratic Coexistence and Peace for the youth branch of the Italian Red Cross under the programme promoted by the International Movement of the Red Cross and the Red Crescent on "Minorities and Human Rights"; (b) organizing an international meeting in June 1996 on "Respect for human rights in emergencies and armed conflicts (thirty years after the adoption of the International Covenants on Human Rights)"; (c) organizing many courses on Humanitarian International Law for teachers and civilian, military and civil service personnel, seminars and workshops, round tables and conferences, in Italy and abroad.

23. Italy also played an active part in the United Nations Year for Tolerance (1995) through conferences in schools, international congresses and cooperation in the activities of UNESCO, lead agency for the Year.

24. Lastly, specialized courses on human rights have been held in Italy's leading universities.

Article 3

25. With reference to equal rights for men and women, the Italian Government has created the Ministry for Equal Opportunities, whose principal remit is to foster equal opportunities between men and women in terms of their civil and political rights.

Article 6

26. The Italian Parliament enacted Law No. 733 of 9 December 1994 ratifying and implementing the Second Optional Protocol to the International Covenant on Civil and Political Rights on the abolition of capital punishment adopted by the United Nations General Assembly on 15 December 1989.

Abolition of capital punishment in the Wartime Military Penal Code

27. Law No. 589 of 13 October 1994 abolished capital punishment for the offences provided by the Wartime Military Penal Code and Wartime Military

Laws. The death penalty has been replaced by life imprisonment as the highest penalty provided by the Penal Code. Law 589/1994 has also repealed article 241 of the Wartime Military Penal Code dating back to 1941 which provided that in the event of flagrant crimes of disobedience, insubordination, mutiny or revolt, or crimes perpetrated by enemy prisoners of war on board a military vessel or aircraft, which place the safety of the ship or aircraft or their war-preparedness in imminent jeopardy, the captain was empowered to order the execution of the culprits who were manifestly guilty, with the obligation of submitting a reasoned report to his superiors. This same article, now repealed, vested the same powers in the commander of a corps, or part of it, when these offences caused an imminent threat to the safety of the corps, or any part of it, under his command.

28. It is hardly necessary to recall that the death penalty does not exist under Italian law. Law 589/1994 abolished capital punishment which was only envisaged in wartime, and had never been applied after the Second World War.

Amendment of article 79 of the Constitution on amnesties

29. Article 79 of the Constitution was changed by Constitutional Law No. 1 of 6 March 1992. It now reads as follows: "Amnesties are granted by an Act of Parliament, adopted with a two-thirds majority of the members of each House, in respect of each individual article and the Act as a whole. The law granting an amnesty must indicate the deadline date for its application. In no case may an amnesty apply to any offences committed after the Bill has been tabled before Parliament."

Extradition for the offences punishable abroad by capital punishment

30. Finally, we would recall the Constitutional Court judgement of 25-27 June 1996 which declared as unconstitutional article 698 (2) of the Code of Criminal Procedure and the part of Law No. 225 of 26 May 1984 (Ratification and Implementation of the Extradition Treaty between the Government of the Italian Republic and the Government of the United States of America, done in Rome on 13 October 1983) implementing article IX of the Extradition Treaty permitting extradition for offences punishable by capital punishment on condition that the requesting country undertakes not to impose a capital sentence or, if already imposed, not to carry it out, offering guarantees deemed adequate by the requested country. In this judgement the Constitutional Court expressly recognized that the prohibition of capital punishment enshrined in article 27 (4) of the Constitution has a specific significance equivalent to the prohibition of inhumane punishments; in the Italian constitutional system this is to be considered a projection of the guarantee provided for the fundamental right to life, as the first of the inviolable human rights enshrined in article 2 of the Constitution. For a more thorough analysis of this judgement, see the comments to article 14 of the Covenant.

Article 7

31. In 1993 the Italian Government submitted the second report on the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, reporting on the developments in legislation and case law in this field.

32. We wish to recall some recent judgements of the Constitutional Court in this connection, in particular, Judgement No. 349 of 24 June 1993, in which the Constitutional Court reaffirmed a concept that is deeply entrenched in the Italian legal system: detention "may not consist of treatment contrary to the sense of humanity". It also stressed the further civilized principle according to which persons sentenced to imprisonment shall be guaranteed the right to act and that part of the human personality which the penalty does not impinge upon. In that same judgement the Court reaffirmed that imprisonment may not entail an overall and absolute deprivation of personal freedom and that "inviolable human rights, which include the right to personal freedom, stem from a principle which has a fundamental value of a general nature".

33. Judgement No. 410 of 5 November 1993 is worth recalling here. In it, the Constitutional Court confirmed that the prison authorities may impose limitations on the forms of imprisonment which do not exceed the personal sacrifice already imposed on the detainee and that "while the treatment under detention not impinging on the personal freedom of the detainee may be left to the judgement of the prison administration, this does not affect the detainee's right to defence against any measures which, while being part of the penalty, may affect inviolable human rights that are specifically guaranteed by the provisions of the Constitution".

The 1995 visit to Italy by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT)

34. In November 1995, the CPT paid a second visit to the Italian judicial facilities, and held talks with national authorities as a follow-up to its first visit in 1993. Following its 1995 visit the CPT submitted a report to the Italian Government requesting more detailed information and comments on specific issues. The Italian Government replied in February 1996 with a report on the situation in certain Italian prisons, and particularly S. Vittore in Milan; the state of psychiatric care in Italy, with specific reference to the health-care facilities for the compulsory admission and treatment of patients discharged from judicial psychiatric hospitals; the organization and technical management of the Juvenile Detention Centres in Italy.

35. For further details on the state of Italian prisons, reference is to be made to the comments on article 10 of the Covenant.

Article 9

36. There is a widespread conviction that with the criminal process in effect since the "restoration" of 1992 (with the so-called anti-crime decree) the defence and the prosecution are not on an equal footing, and the judge is not an umpire, but on a par with the Public Prosecutor, and that the Public Prosecutor "abuses" his powers by overeagerly requesting preventive detention and imprisonment orders in order to get the defendants to confess and to reveal their accomplices. Law No. 332 of 8 August 1995 was designed to "curtail" these detrimental effects by changing (sometimes only partially) some of the most controversial aspects of the criminal process. The judiciary has viewed Law 332/1995 with mistrust and sharp criticism; it is said that this Law might interfere with the strategies adopted to combat mafia-inspired

organized crime. Conversely, the lawyers have hailed these new rules as a first significant step towards restoring the balance between the parties to the process. Academics have stressed the technical shortcomings and lack of coordination provided by the Law, and the fact that some of its provisions are not systematic. But over and above the objective technical and coordination shortcomings, this Law does contain a number of extremely important provisions. It introduces many amendments to the Code of Criminal Procedure with reference to the laws on preventive detention and the preliminary investigation phase. Here is a summary of the main provisions of this Law.

37. Section 1 amends article 104 (3) of the Code of Criminal Procedure: suspects under preventive detention may only be denied access to their defence counsel for five instead of the former seven days.

38. With the introduction of article 141 bis of the Code of Criminal Procedure, section 2 provides that whenever a person under arrest is questioned outside a court of law, the whole interview must be entirely recorded on tape or by audio-visual devices.

39. Section 3 amends paragraphs (a) and (c) of article 274 of the Code of Criminal Procedure in relation to preventive detention in prison (the likelihood of tampering with the evidence or repeating the offence). Paragraph (a) provides that preventive detention may be ordered if the following conditions are met:

(a) There must be specific as well as pressing reasons for it;

(b) It must be related to "investigations connected with the case in question";

(c) There must exist an "actual and present threat to the gathering of evidence and its authenticity";

(d) Reasons must be given for assuming the existence of an actual and present threat to the gathering of the evidence and its authenticity, without which the measure is null and void;

(e) The refusal of the person under investigation or the accused to make a statement or to admit guilt may not be considered to constitute an actual threat to the gathering of evidence or its authenticity.

40. Basically, the amendment limits the scope for issuing preventive detention orders, by correlating specific investigations still to be carried out with the presence of a threat to the gathering of evidence or its authenticity, on the basis of specific circumstances. The rules for preventive detention for the purposes of obtaining evidence are now more stringent. The same applies to paragraph (c), which reduces the number of circumstances in which the likelihood of a crime being committed justifies preventive detention. This paragraph (c) of article 274 of the Code of Criminal Procedure stipulates that the likelihood of a repeat offence may only be used as the ground for requesting preventive detention with reference to crimes of the same kind which are also punishable by a maximum penalty of not less than four years' imprisonment.

41. Sections 4, 5, 6 and 7 deal with the conditions for preventive detention. Section 4 introduces paragraph 2 bis into article 275 of the Code of Criminal Procedure, prohibiting preventive detention when a suspended sentence is likely to be passed.

42. Section 5 changes paragraph 3 of article 275 of the Code of Criminal Procedure, emphasizing the idea that preventive detention must be the extrema ratio. It confirms preventive detention for offences under article 416 bis, but also provides for preventive detention not to be ordered in the absence of the need for preventive measures. The subsequent paragraph 2, replacing paragraph 4 of article 275 of the Code of Criminal Procedure, provides for the prohibition of preventive detention to be extended to cover specific classes of persons: pregnant mothers, parents of small children, persons aged over 70 and sick people who cannot be given proper treatment in prison.

43. Section 6 amends article 278 of the Code of Criminal Procedure so that when deciding on the statutory penalty for each actual or attempted offence, account must not be taken of repeat offences.

44. Section 7 changes the conditions of application of enforcement measures under article 280 of the Code of Criminal Procedure, differentiating between the different kinds of preventive measures on the basis of the respective penalties.

45. Section 8 (1) amends paragraph 1 of article 291 of the Code of Criminal Procedure, and provides that when the Public Prosecutor requests the investigating magistrate court to issue a preventive measure he must also provide the judge with any evidence favourable to the accused, particularly those given in the Defences. The repeal of paragraph 1 bis of article 291, section 8 (2) prevents the Public Prosecutor from obliging the investigating judge to adopt only the preventive measure he requests.

46. Section 9 amends paragraph 2 of article 292 of the Code of Criminal Procedure, requiring more specific reasons when the judge orders a preventive measure, without which the order is automatically null and void. In particular, it provides that in the reasons for the measure, reference must be made to the seriousness of the offence (para. (b)), the fact that the offender is dangerous, the time that has elapsed since the commission of the offence (para. (c)), and the reasons for considering the evidence submitted by the defence to be irrelevant (para. (c) bis), and setting the date on which the order lapses (para. (d)).

47. Section 10 amends paragraph 3 of article 293 of the Code of Criminal Procedure with regard to the formalities involved: the request made by the Public Prosecutor and all the case papers must be lodged with the office of the Clerk of the Court which has issued the order for preventive detention or other preventive measures.

48. Section 11 amends article 294 of the Code of Criminal Procedure by providing that a person under house arrest must be questioned within 10 days of the enforcement of the house arrest order, or its service. The person under preventive detention must be questioned within 48 hours if the Public Prosecutor so requests in the application for preventive detention. However,

the questioning by the Public Prosecutor of a person in preventive detention may not take place before the investigating judge has questioned the accused.

49. Section 12, amending paragraph 3 of article 297 of the Code of Criminal Procedure, deals with the so-called linked charges, and provides not only that the preventive detention period shall run from the day of its enforcement or notification for the first time and must be commensurate with the most serious offence, but also that the measure must refer to cases which are teleologically connected, or cases of persistent crime.

50. Section 13 adds paragraph 3 ter after paragraph 3 bis in article 299 of the Code of Criminal Procedure and amends paragraph 6 of article 503 of the Code of Criminal Procedure, enabling the investigating magistrate to question the accused before deciding on a request to revoke or substitute the preventive measure. It also introduces a coordination rule under which the transcript of the interrogation taken down by the preliminary investigating magistrate can be filed among the case papers and used by the judge before deciding on whether to revoke the measure or substitute another.

51. Section 14 amends article 301 of the Code of Criminal Procedure and introduces a new procedure for lifting the preventive detention measure. The present regulations regarding alternatives to preventive detention in custody remain; however, the latter, save in the case of proceedings relating to organized crime, or crimes committed in relation to organized crime, may not exceed 30 days and may be renewed two more times only, within the maximum of 90 days.

52. Section 12 partially amends article 304 of the Code of Criminal Procedure regarding the suspension of the maximum period of preventive detention. Paragraph 1 provides a further case under which preventive detention may be suspended in the phase during which the judgement is being drafted, and particularly while awaiting the terms provided by paragraphs 2 and 3 of article 544 of the Code of Criminal Procedure. Paragraph 4 of article 304 introduces the suspension of preventive detention when a preliminary hearing is set for the causes indicated under (a) and (b) of article 303 (1). This latter suspension, together with the suspension provided by paragraphs 1 (c) and (b), do not apply to co-defendants to whom suspension cases do not apply, and who request separate proceedings to be instituted against them (para. 5). Article 15 (6) provides that the maximum period of preventive detention may in no case exceed double the period provided by articles 303 (1), (2) and (3) and the terms increased by one half as provided by article 303 (4) or, if more favourable, by two thirds of the maximum temporary penalty provided for the offence of which the accused is charged or of which the accused has been found guilty. When computing these terms, except with regard to the limit on the overall duration of preventive detention, no account is taken of the periods of suspension provided by paragraph 1 (b) (7). Lastly, section 15 (2) amends article 159 (1), by providing that the period of prescription shall be suspended also in cases of preventive detention, although this only applies when the suspension is imposed by a particular statutory provision.

53. Sections 16 and 17 introduce substantial changes to articles 309 and 310 of the Code of Criminal Procedure regarding the appeal against detention

orders: in addition to the fact that the period for appeal may not take account of the days for which the interrogation is deferred under the new article 104 (3) of the Code of Criminal Procedure and the express provision of the right of the defence to obtain a copy of all the case papers filed with the Court Clerk's office, this measure also introduces a specific period (five days) for submitting case papers to the court, failure to comply with which renders the measure null and void.

54. Section 18 alters the provisions for registering the names of persons suspected of a crime, introducing the principle that the registration of their names shall be made known to the persons concerned save in the case of particularly serious crimes (art. 407 (2) (a)) or for which the maximum penalty is in excess of four years. For all the other crimes, the prohibition of notifying the registration is lifted, both purely in the case of the defendant and his defence counsel upon request. However, the Public Prosecutor is empowered to order that registration of suspects shall be kept secret for the purposes of investigation, but not for more than three months. This is considered necessary to guarantee the right to defence, and particularly in order to encourage and bring forward recourse to alternative proceedings.

55. Section 19 amends article 369 (1) of the Code of Criminal Procedure regarding service of notice of investigation, making it clear that this notice is only to be served where a guaranteed act must be performed, and not at any other time during the preliminary investigations.

56. Section 20 amends article 386 (5) of the Code of Criminal Procedure, establishing the general principle that the preventive measures must be adequate from the moment they are first applied by the judicial police authorities.

57. Section 21 (1) amends article 407 (2) (a) of the Code of Criminal Procedure regarding the maximum period of preliminary investigations. Subsection 2 indicates the provisions for which reference to article 275 (3) of the Code of Criminal Procedure is replaced by reference to article 407 (2) (a) (1-6) of the Code of Criminal Procedure.

58. Section 22 adds paragraphs 2 bis and 2 ter to article 38 of the transitional measures of the Code of Criminal Procedure regarding the right of defence to table evidence, and provides that in the course of the investigations, defence counsel may table evidence for the defence for the court to decide directly upon, without passing through the Public Prosecutor, and provides that the documentation may be included in the case papers referring to the investigation either in their original form or copies thereof, whenever the person under investigation asks for them to be returned.

59. Section 23 modifies article 94 of the provisions for implementation, coordination and transitional measures of the Code of Criminal Procedure, introducing a procedure for informing the detainee upon arrival in prison with regard to the substance of the detention measure served on him, and gives him the right to consult his personal file at any time and to have a copy of all measures issued by the courts against him.

60. Section 24 adds article 102 bis to the provisions for implementation, coordination and transitional measures of the Code of Criminal Procedure, providing that anyone who has lost his/her work as a result of unlawful detention must be reinstated.

61. Section 25 amends article 371 bis of the Code of Criminal Procedure regarding false information supplied to the Public Prosecutor. The penalty may be reduced by up to four years instead of one to five years, while an additional paragraph provides that the criminal proceedings may be suspended until the Court of First Instance issues its judgement in proceedings during which information has been laid before the court, or when proceedings have not been previously closed or a nolle pro sequi order has been issued. However, in the event that the information has been rejected, proceedings may be instituted immediately.

62. Section 26 amends article 381 of the Code of Criminal Procedure by adding paragraph 4 bis, prohibiting the arrest of a person required to supply information by either the Judicial Police or by the Public Prosecutor in relation to crimes concerning the substance of the information provided or the refusal to provide it.

63. Lastly, section 27 relates to the procedures for enforcing a measure involving house arrest, while section 28 lays down transitional and coordination measures.

Amendment to article 68 of the Constitution relating to parliamentary immunity

64. Constitutional Law No. 3 of 29 October 1993 introduced a number of amendments to article 68 of the Constitution relating to parliamentary immunities. This was made necessary by the Bribesville and the Clean Hands investigations which revealed that the request for authorization to undertake criminal proceedings for parliamentarians had become an anachronistic caste privilege, and because of its recurrent use as part of the investigations carried out by the judiciary.

65. The new wording of article 68 of the Constitution provides as follows: members of Parliament may not be required to answer for any opinions expressed, or any votes cast by them in the exercise of their office. Without authorization from the House to which any member belongs, no member may be subjected to a personal or house search, or be arrested or otherwise deprived of personal freedom, or kept under detention, save in implementation of an irrevocable court judgement, or when caught in the actual commission of a crime for which statutory arrest is provided for persons caught in the act. Similar authorization is required before the conversations or communications or mail of members of Parliament may be intercepted in any way.

Measures to prevent violence at sports stadiums

66. Lastly, Law No. 714 of 24 February 1995, enacting with amendments Decree-Law No. 714 of 22 December 1994, provides urgent measures to prevent violence at sports competitions. When being enacted, clause 1 was reworded completely, and clause 1 bis was added, lifting the ban on sports clubs from granting facilities to supporters' associations whose members include persons

prohibited from attending the sports grounds and stadiums. These clubs may be requested to contribute towards the expense of policing sports events in which they take part.

67. In the new wording, section 1, amending and replacing section 6 of Law No. 401 of 13 December 1989, provides as follows:

(a) A ban on entering sports stadiums or any other places in which sports are being held on persons reported, or already convicted of having been on the same premises with weapons, sticks, iron bars, or other items with which to cause bodily harm, etc., or for having taken part in episodes of violence during sports events;

(b) The chief of police may order these persons to report to the police station indicated in the measure on the days and at the times during which sports events take place;

(c) The ban becomes effective as from the first sports event following service of the order on the person concerned, and shall be filed with the Procuratore della Repubblica at the Pretura Court in the district in which the police station lies. The Public Prosecutor shall, within 48 hours of notification, request the judge for preliminary investigations at the local Pretura Court to validate the order. The ban ceases to be effective if it is not validated within the following 48 hours;

(d) The person concerned may appeal to the Court of Cassation against the validation order, but this does not suspend its effectiveness;

(e) The period during which a person is prohibited from being present at the stadium or sports ground may not exceed one year and a ban may be revoked or modified whenever the conditions justifying it originally no longer exist or have changed, or whenever the court has ordered the case to be closed, or when the person has been considered rehabilitated.

68. Lastly, the new Act not only lays down criminal penalties for the aforementioned offences (with imprisonment from between 3 and 18 months), but also provides that in the judgement convicting any person who has failed to comply with the ban ordered by the chief of police, may impose a further penalty prohibiting that person from going to sports events for a period varying from two months to two years, and imposing the obligation to report to the police station during sports events.

Article 10

The Italian prison situation

69. As indicated in the comments to article 7 of the Covenant, in 1995 the European Committee for the Prevention of Torture (CPT) visited Italy's prisons and requested the Government to provide information. In the report drawn up by the Government in February 1996, it is stated that according to estimates updated to 31 December 1995, just over 46,000 persons were detained in Italian prisons. This figure confirmed the trend towards a slight fall in numbers as a result of the first effects of the entry into force of Law No. 332 of

8 August 1995. However, it was indicative of the serious overcrowding which continues to afflict Italy's prisons, which is seriously jeopardizing the serving of sentences and makes it very difficult to treat and re-educate prisoners, and to provide them with prison work and health care.

70. Italy's prisons are still inadequate, as is the overall prison capacity (particularly in terms of the quality of the facilities and their modernity), even though it must be admitted that thanks to much effort in the prison-building sphere, the difference between the overall number of prisoners and the actual capacity is gradually declining.

71. On 30 November 1995, the total number of prisoners amounted to 48,227. Prison overcrowding makes it difficult, despite the commitment of the prison staff, to give prisoners real individual treatment and hence to effectively re-educate them. It also gives rise to crime by making it difficult to separate detainees awaiting trial and convicted prisoners, or first-time or occasional offenders from hardened criminals, or criminals belonging to the organized underworld, who take advantage of this situation to recruit new members. Overcrowding also causes problems regarding maintaining order in the prisons, particularly because of so many drug addicts (30 per cent of the prison population) and foreigners who, because of communication difficulties or different customs and habits, find it difficult to fit into the prison community.

72. Overcrowding also raises health and hygiene problems (which the Prison Department is examining with particular attention, and for which vast resources have been employed in recent years) due to the spread of HIV (on 30 June 1995 2,500 prisoners were HIV-positive) and AIDS.

New measures regarding the treatment of prisoners

73. With regard to the treatment of prisoners, we would mention Law No. 296 of 12 August 1993 which enacted, with amendments, DL No. 187 of 14 June 1993, containing new provisions regarding the treatment of prisoners and the expulsion of aliens, and amending Law No. 354 of 26 July 1975 governing the prison system, and in particular alternative measures to imprisonment. The provisions of Law 296/1993 help to extend the well-established principle of Italian law that punishment has a re-educating function, while serving the purposes of general and special prevention. The new regulations reform the procedures for granting alternative penalties to imprisonment for persons convicted even of serious crimes, extending the application of alternative measures to house arrest and enabling particular categories of convicted criminals to serve their sentence at home when this does not exceed three years, even if it is a residual part of a longer sentence.

74. More specifically, Law 296/1993 contains, inter alia, the following provisions: (a) encouraging prisoners and internees to take up work and to attend vocational training courses (section 2, amending section 20 of Law No. 354 of 26 July 1975); (b) encouraging house arrest (section 3, amending section 47 of Law No. 354 of 26 July 1975); (c) regulating the interception and recording of telephone conversations, which must now be ordered by the courts (section 4, replacing article 37 of the regulations approved by Presidential Decree No. 431 of 29 April 1976); (d) extending the scope for

alternative penalties to short prison terms (section 5, amending section 53 of Law No. 689 of 24 November 1981); and (e) improving the health-care service in prisons (section 6, amending Law No. 740 of 9 October 1970, and section 7).

75. Law No. 296/1993 also contains a number of provisions regarding the deportation of aliens subject to preventive detention for actual or attempted crimes, which will be examined in the comments relating to article 13 of the Covenant.

76. On the subject of prison, one of the most recent measures adopted by the Italian Government was Decree-Law No. 552 of 23 December 1995, amending Law No. 442 of 20 October 1992, providing that the Sardinian prisons at Pianosa and Asinara can be used until 31 December 1999 for detaining prisoners, with a six-monthly report to be tabled by the Government before Parliament on progress in the implementation of the top-security construction or adaptation programme for the differential treatment of prisoners.

77. Decree-Law No. 572 of 23 December 1995 is also important, repeating earlier decrees that were never enacted (Decree-Laws Nos. 269 of 5 July 1995, 369 of 1 September 1995 and 456 of 30 October 1995), increasing the number of prison police and containing particular provisions to complete the placement of female police officers, and introducing procedures for moving the prisoner transport service from the carabinieri and police force to the Prison Police Service.

Treatment of detainees suffering from HIV infection

78. We would also recall Decree-Law No. 139 of 14 May 1993, enacted as Law No. 222 of 14 July 1993, containing urgent provisions relating to the treatment of detainees suffering from HIV and drug addiction.

79. With regard to the treatment of detainees suffering from HIV, Law No. 222/1993 introduced article 286 bis into the Code of Criminal Procedure (prohibition on preventive detention) to provide as follows: (a) in paragraph 1, any person suffering from HIV and incompatible with the status of a detainee may not be detained in a prison in preventive detention. Incompatibility exists, and is declared to exist by the court, in the case of full-blown AIDS or serious immunity deficiency. In other cases, incompatibility caused by HIV infection shall be assessed by the court taking account of the remaining period of preventive detention to be served and the effects that the present physical conditions may have on the danger which the detainee poses. The request for the state of incompatibility to be ascertained by the court may be made by the detainee in person, or the detainee's counsel or the Prison Health Service. In the event of incompatibility the judge shall lift the preventive detention order or the order for house arrest in the home of the convicted prisoner; (b) paragraph 2 defines the cases of full-blown AIDS and serious immunity deficiency by decree of the Minister of Health and the Minister of Justice; it also provides the diagnostic and forensic medical procedures to ascertain HIV infection, and the level of immune deficiency which is relevant for the purposes of deciding on incompatibility on the part of the court; (c) paragraph 3 provides that when for diagnostic purposes in order to ascertain incompatibility with detainee status, or in other cases than those provided by paragraph 1, there are

therapeutic requirements regarding HIV infection, provided that these requirements cannot be met in the prison environment, the judge may order the temporary admission of the detainee to a National Health Service facility for as long as is necessary, ordering any appropriate measures to prevent the detainee from escaping. After the need for admission ceases, the judge shall see whether the incompatibility has been ascertained pursuant to paragraph 1, and shall otherwise restore the preventive detention order in prison or proceed under article 299. In the event that the court orders house arrest, the detainee shall serve the term in his own home or in a community residence or in a hostel, as provided by section 1 (2) of Law No. 135 of 5 June 1990.

80. It should be noted that article 286 bis of the Code of Criminal Procedure referred to above has been dealt with frequently by the Constitutional Court. In particular, we would mention the following:

(a) Judgement No. 438 of 18 October 1995, which pointed out, inter alia, that while the collective health in a particular prison environment represents a worthy goal, it must also be stated that it is reasonable to remove a person suffering from AIDS from a prison, insofar as remaining in the prison could be prejudicial to the health of the other detainees; to do otherwise, would jeopardize other basic rights contained in the Italian Constitution. The same judgement also remarked that the protection of the health of all the persons in a prison is not the only value which the legislator intends to safeguard. In addition to the collective health the provision in question evidently intended to protect the health of the individual as well;

(b) Judgement No. 439 of 18 October 1995, declaring that article 286 bis of the Code of Criminal Procedure was unconstitutional where it prohibited preventive detention in prison of persons suffering from HIV infection, full-blown AIDS or from serious immune deficiency, even where the exceptional requirements referred to in article 271 (1) of the Code of Criminal Procedure applied and where the measure could be enforced without causing damage to the health of the individual and any other detainees.

Treatment of drug-addicted detainees

81. As indicated above, Decree-Law No. 139 of 14 May 1993, enacted as Law No. 222 of 14 July 1993, changed certain provisions in the Consolidation Act governing drugs and psychotropic substances, and the treatment and rehabilitation of persons suffering from drug addiction, approved by Presidential Decree No. 309 of 9 October 1990.

82. In particular, section 89 was replaced (Restrictive measures against drug addicts or alcoholics undergoing therapeutic programmes). The new text provides that drug addicts and alcoholics attending a therapeutic programme to dry out in a public facility assisting drug addicts or in an authorized structure may not be subjected to preventive detention in prison except where there are exceptionally important reasons for it, and where the interruption of that programme might jeopardize the possibility that the detainee can give up taking drugs or cease to be an alcoholic. The same measure, or a

subsequent one, can be issued by a judge to establish the control needed to ascertain whether the drug addict or the alcoholic is continuing the recovery programme.

83. Provision is also made for a drug addict or alcoholic under preventive detention in prison wishing to follow a recovery programme with a public drug addiction service or an authorized residential facility to have the preventive custody order removed, provided that there are no exceptional reasons for it continuing. The person concerned must request the lifting of the order. A certificate issued by a public service for drug addicts, attesting to the person's drug addiction or alcoholism, together with a statement that the facility is willing to take in the person, must be annexed to the application. The public service is in any event required to accept the request to begin a programme of treatment.

84. The first subsection of section 90 of the Consolidation Act has been replaced. The new version provides that a person sentenced to preventive detention of not more than four years, even if it is combined with a fine, for crimes committed in relation to the state of drug addiction, or who must serve a prison term of four years for the same crime, may have the sentence suspended for five years by the parole tribunal whenever the person is following a treatment or rehabilitation programme. The same provision applies for the crimes provided by section 73 (5) when the sentence does not exceed four years, even if compounded with a fine or when it is still to be served.

The training of the Prison Service police

85. One of the most recent measures in this area is the Ministerial Decree of 25 February 1995 adopted at the joint initiative of the Ministers of Justice, Defence and the Interior, introducing a number of measures relating to the training of the Prison Service police personnel to perform the service of transferring prisoners jointly with the carabinieri police personnel.

86. Law No. 395 of 15 December 1990 gave the Prison Service police the responsibility for transferring detainees and prisoners. In view of the need to give the Prison Service police practical training, they attended a course to train them to transfer prisoners which was run by the carabinieri police. Considering that this practical training was given by carabinieri personnel, Ministerial Decree of 25 February 1995 provided that 90 officers of the Prison Service police who had attended the theoretical course at the carabinieri school on transferring detainees should be joined by carabinieri officers when performing this service. This is being done in Milan and Palermo and in the Lombardy and Sicilian regions and may also be extended to other regions using other members of the Prison Service police after they have taken these theoretical courses.

87. Another very important measure as far as this Government is concerned is the training and refresher courses provided for Prison Service personnel by the training schools belonging to the Prison Department. One of the subjects taught to the Prison Service personnel is specifically entitled "The international protection of human rights and the rights of prisoners", which is given in the form of seminars.

88. Teaching was also discussed as part of a civic education programme in courses 124 and 128 for Prison Service police trainees in 1993. The following year, in 1994, this subject was also discussed in seminars at the 133rd course for Prison Service police trainees. In November-December 1994, Rudiments of European and Community Constitutional Law was placed on the curriculum for police inspector refresher courses. In 1995 in the two courses for deputy superintendent trainees the subject was included in the syllabus in its original form ("The international protection of human rights and of prisoners").

89. Law No. 354/1975 on the reform of the prison system - with all its subsequent amendments and additions - was enacted in exact conformity with the Standard Minimum Rules for the Treatment of Prisoners and the European Prison Rules (Recommendation No. R-87-3, approved by the Council of Ministers of the Council of Europe on 12 February 1987).

90. The Prison Service believes that its priority task is to give the widest possible publicity both in prisons and outside to the documents adopted by these international organizations, by publishing them in the journal Rassegna penitenziaria e criminologica. This is a journal which is published three times a year and copies are sent to all Italian prisons for the benefit of the staff and the prisoners. Great importance is also attributed to basic training and refresher courses for the prison personnel in their own schools.

Juvenile prisons

91. In a number of recent ministerial circulars (CM) issued in 1994 and 1995 dealing with the organization and technical management of juvenile prisons, the Ministry of Justice has laid down a number of guidelines to: (a) rationalize the instruments and the procedures required to implement the decisions of the juvenile courts and more properly guarantee the rights of young detainees; (b) redraft and adjust former provisions; (c) confirm and draw on models and experiences that have already been tested in certain areas; (d) make the organization and management of juvenile prisons more homogeneous. This has been done because the juvenile prisons in recent years have undergone a radical change in terms of the prison population, both as a result of new legislation and of the increase in juvenile delinquency, particularly in certain areas of the country.

92. Particular care has been given in this regard to establishing the institutional purposes of juvenile prisons and their organization. For example, emphasis has been placed on times of service and working hours (CM 1 February 1994 No. 931049), specifying that in order to provide juvenile detainees with educational support it is necessary to have teaching personnel present in the prisons roughly from 8:00 a.m. to 8:00 p.m. on all weekdays, on a shift basis, with other shifts for holidays and weekends. Particular attention has been paid to the question of school activities, working activities and entertainment (CM 23 April 1993 No. 929127 and CM 2 March 1994 No. 30165), emphasizing the importance of school/occupational activities and cultural stimulation, sport and recreation activities to enable young detainees to develop and mature, and to guarantee a system whereby they are provided with training opportunities to meet their needs to be busily occupied at least six to eight hours every day.

93. A number of circulars (CM 5 October 1994 No. 31611 and No. 31612) have also dealt with the question of cooperation with persons from outside, establishing the need for each prison management to provide teachers, educators and trainers and persons responsible for cultural and leisure activities with all the instruments they need in order to be able to make the most of their cooperation. In order to guarantee young detainees an educational service which meets their needs as far as possible, it has been emphasized that school activities must be programmed, organized and carried out not solely to enable them to obtain paper qualifications but also to offer them specific opportunities to mature and to grow. Against this background the goals to be pursued have been identified as follows: (a) for training, the juveniles must be offered educational routes which are proportional to the period in which they remain in prison, and must be linked to real-life experience; (b) great attention must be paid to the cultural and socio-psychological features of the juveniles; (c) educational activities must be carried out using experimental tools and methodologies focusing particularly on integrating them with practical occupational training and leisure activities.

Article 12

Non-EEC aliens

94. One source of great concern is the growing numbers of illegal aliens in Italy. The difficult circumstances under which they live makes it hard for them to fit into society in an alien culture, making them easy prey to criminal organizations, often controlled by their fellow countrymen, who use them above all for drug-trafficking, prostitution and, in the case of minors, for crimes against property. All of this is creating public order problems of great concern to the authorities, and is giving rise to racist attitudes which are alien to the Italian tradition, and which run the risk of involving the foreign nationals who are honestly performing the low-status jobs refused by Italians.

95. The greatest problems are caused by the fact that since there are so many illegal immigrants, those who are documented under Italian and international law are unable to make full use of the services and the assistance which is available to them.

96. The problem of immigration has now become a national emergency and must be dealt with as such, both by fostering agreements with the sending States in order to curtail migration flows and by developing work opportunities in those countries, while keeping more stringent control over the national borders. It is in any event necessary to revise immigration law in order to make controls easier and to make measures more effective including deportation, which in most cases is not followed up at the present time. In order to achieve this, the Government recently issued Decree-Law No. 489 of 18 November 1995, which is currently before Parliament, which it is worth while examining in more detail here.

Entry and residence

97. On the subject of the entry and residence in Italy of foreign nationals, the Government recently issued Decree-Law No. 489 of 18 November 1995 governing immigration into Italy and containing provisions relating to the regulation of migration flows and seasonal work by citizens of countries outside the European Union (chap. 1); the entry and residence of foreign nationals (chap. 2); cases and procedures for their deportation (chap. 3); obtaining documentation and being joined by their families (chap. 4); transitional provisions (chap. 5). Since Decree-Law No. 489/95 contains provisions designed to regularize both entry and residence, and for the deportation of aliens, it will be examined separately under articles 12 and 13 of the Covenant.

98. For the purposes of the article at issue here, we would note the following:

(a) Article 4, which provides that aliens may not be given an entry visa if they have been convicted in Italy or abroad for any crime for which deportation from Italy is the prescribed penalty;

(b) Article 7 septies, which introduces a number of specific crimes such as: (i) the failure, without reason, to produce a passport or other identity document at the request of the public security police; (ii) destroying or concealing an identity document; (iii) returning to Italy and remaining there without authorization following deportation;

(c) Article 8, which lays down penalties for encouraging the unlawful entry of aliens into Italy. A penalty of imprisonment for between one and three years and a fine of up to 30 million lire is imposed on anyone encouraging non-EU nationals to enter Italy in violation of the Decree. Specific aggravating circumstances are also indicated: when these activities are carried out by three or more persons, or refer to the entry of five or more persons, or when they are designed for the subsequent exploitation of prostitution or children;

(d) Article 9, which lays down more severe penalties for the unlawful use of alien workers, increasing the penalties provided by section 12 (1) and (2) of Law No. 943 of 30 December 1986;

(e) Section 12, which provides for regularization following an offer of work, and in particular subsection 8 (8) which provides a penalty of between three months and one year's imprisonment (with a subsequent withdrawal of the residence permit) for making false statements in the declarations provided for by article 12, subsection (9), which declares that aliens obtaining regularization may not be charged, and subsections (10), (11) and (12) which lay down the procedures for regularizing previous employment relations by employers, and in particular specifying that no action will be taken in respect of offences relating to residence and work in relation to the employment of alien workers.

The right to be joined by members of the family

99. The right to be joined by members of the family may be exercised subject to possession of suitable accommodation following an investigation by the mayor of the municipality of residence and a monthly salary deemed adequate according to the size of the family.

Facilities for assisting aliens

100. Regarding the structure of assistance provided for aliens, the Government issued a regulation to implement section 12 (4) of Law No. 39/1990 by Decree No. 567 of 21 December 1992, setting up reception centres at the following border crossings: Rome-Fiumicino Airport, Milan-Linate Airport, Tarvisio, Trieste, and Trapani harbour.

101. In order to deal with the dramatic situation in the former Yugoslavia, the Government enacted Law No. 390 of 24 September 1992 to provide extraordinary humanitarian aid for the evacuees of the republics that have emerged from the former Yugoslavia, and urgent measures regarding international and Italian relations abroad. Administrative permission has been issued to provide evacuees from these territories with residence permits in Italy for work or study purposes on humanitarian grounds, for a period of one year, to be renewed until the state of war is over.

Article 13

102. With regard to the deportation of aliens, further amendments to Law No. 39 of 28 February 1990 have been made by Law No. 388 of 30 September 1993, ratifying Italy's accession to the Schengen Agreement and the Convention implementing it.

Deportation

103. Because of the worsening problems linked to increasing immigration into Italy, the Government issued Decree-Law No. 489 of 18 November 1995 providing urgent measures regarding immigration policy and the regulation of entry and stay within Italy of non-EU nationals, which thoroughly overhauled the existing legislation. In particular, as far as incoming migrants and seasonal workers are concerned, the Decree stipulated new rules governing entry and residence, family reunification, regularization, deportation and criminal penalties, in order to ensure that the new legislation is fully respectful of the dignity of man, who is offered the necessary constitutional guarantees with regard to work, the family, health and court protection with respect to penalties, preventive measures and administrative measures.

104. With regard to deportation in particular, a distinction is drawn between the authorities empowered to order expulsion. A deportation order can be issued:

(a) By the trial judge or the judge implementing an expulsion measure as a security measure in relation to the crimes provided in articles 380 and 381 of the Code of Criminal Procedure;

(b) By the Pretore judge, at the request of the Public Prosecutor, as a preventive measure whenever specific proof exists for believing that the foreign national is engaged in criminal activities or that his livelihood is normally based on such criminal activities, or that he commits crimes that threaten or might offend the physical or moral integrity of minors, public health and public security;

(c) By the judge validating the arrest warrant or issuing the preventive detention order, and by the Tribunale della Libertà for the crimes of living off immoral earnings, aggravated theft, robbery and extortion and drugs-related crimes. This measure, which is defined as a preventive measure, may not be adopted when there are other ongoing trial requirements which cannot be put off;

(d) By the Prefect, where the alien is illegally present in Italy, after having avoided border controls or when the conditions for staying in Italy no longer apply (the residence permit has expired or been withdrawn, etc.). This measure may be challenged before the Regional Administrative Tribunal and in the meantime action on it is suspended until the final judgement is issued;

(e) By the Minister of the Interior, for reasons of public order or State security;

(f) By the trial judge or judge implementing the order at the request of the person concerned or his counsel, whenever the alien is currently serving a sentence or is under preventive detention for crimes for which, respectively, the penalty is not less than three years' imprisonment, or for actual or attempted crimes other than those provided by article 275 (3) of the Code of Criminal Procedure, provided that there are no other trial requirements which make deportation impossible.

105. While defining the preventive detention procedure and while the administrative hearing challenging a deportation order issued by the Prefect is being examined, the alien may be held in non-prison facilities with appropriate security features. The Decree provides that deportation may not be effected for an alien under 16 years of age who has lived in Italy continuously for at least five years with relatives (up to the fourth degree) of Italian nationality, or in the case of women who are more than three months pregnant. However, the general and special rules governing asylum, for humanitarian reasons, remain unchanged.

106. With regard to the prohibition on deporting minors aged under 16 years, the Minister of the Interior issued a circular on 22 November last year to all prefects, government commissioners for the province of Trent and Bolzano, the President of the Regional Government of Valle d'Aosta and all the chiefs of police throughout Italy, stating that in the light of the Convention on the Rights of the Child, all minors living in Italy with their families or with any person legally responsible for them and representing them, may be accompanied by the person exercising parental powers, or the legal representative, in the event of deportation.

107. A major boost has been given to measures to control crime by introducing the crime of conspiracy to introduce foreign nationals unlawfully or to use unlawfully foreign labour, with the specific aggravating circumstance of committing the crime for the purpose of recruiting persons for the practice of prostitution or to live off their immoral earnings or to bring minors into the country to be used under unlawful conditions to exploit them.

108. One particularly important measure has been the law to enable aliens in Italy on the date of entry into force of the Decree-Law to regularize their position, if they deliver to the police station a statement by an employer, declaring readiness to employ them immediately under regular contract, even for seasonal work, or who declare without any particular formalities that they work in the employment of an Italian citizen. One specific case for regularization applies to enable illegal aliens to regularize their position if their spouse, children or a parent is living in Italy.

Deportation of foreigners under preventive detention

109. Lastly, Law No. 296 of 12 August 1993, enacting Decree-Law No. 187 of 14 June 1993, introduced, in section 8, a number of provisions for incorporation into the Decree-Law of 30 December 1989, enacted as Law No. 39 of 28 February 1990, regarding the deportation of aliens as follows:

(a) Aliens under preventive detention for crimes committed or attempted other than those indicated by article 275 (3) of the Code of Criminal Procedure, or who have been given a final conviction and sentenced to a penalty of no more than three years' imprisonment, even if this constitutes the residual part of a longer sentence, are to be immediately deported from Italy to their home country or country of origin, save when there are trial requirements which make this impossible, or for serious personal health reasons, or in the event of danger to their safety and person as a result of war or epidemic;

(b) Deportation may be ordered at the request of the alien or his counsel by the trial judge in the case of the request being made by the defendant, or by the judge ordering the implementation of a judgement in the case of a person already convicted. Having acquired all the relevant information from the police authorities, after ascertaining that the alien possesses a passport or an equivalent document and after hearing the opinion of the Public Prosecutor and the other parties to the case, the court shall order the deportation, against which the person concerned may appeal to the Court of Cassation;

(c) The implementation of the deportation order against foreigners who are detained suspends the terms of preventive detention and the service of sentence, but the state of detention is restored if the deported alien returns to Italy, and also if the deportation order is not actually effected;

(d) The alien subject to criminal proceedings and deported is authorized to return temporarily to Italy solely in order to attend court or to perform any acts for which his presence is required.

Article 14

Entry into force of the new Code of Civil Procedure

110. As far as the civil process is concerned, the greatest novelty has been Law No. 534 of 20 December 1995 completing the long and fragmented process of reforming the Code of Civil Procedure which began by Law No. 353 of 26 November 1990. As indicated in the previous report, Law No. 353/1990 introduced a wide-ranging reform of the civil process and hastens trial times, rationalizing the phases in the procedure, modifying aspects which made it possible to abuse the process, and introducing the possibility for the investigating magistrate to issue injunctions and orders for the payment of sums that were not contested.

111. An important structural change was carried out by Law No. 374 of 21 November 1991 creating the Justice of the Peace. The main purpose of this was to relieve the ordinary courts from the huge workload of petty claims, and also to implement the constitutional principle of the participation of laymen in the administration of justice. The impact on the judicial system of the new honourary judge will be considerable when one considers the scope of their powers, and the fact that there are 4,700 Justices of the Peace.

112. Law No. 353/1990 was supposed to come into force on 1 January 1992, but it was postponed for one year by Law No. 374/1991, and then by another year by Law No. 477/1992. This was followed by six Decree-Laws extending the date still further (particularly Decree-Laws Nos. 521/1993, 105/1994, 235/1994, 380/1994, 493/1994 and 571/1994), the last of which, enacted with amendments by Law No. 673 of 6 December 1994 set the dates of 30 April and 1 May 1995 as the dates for implementing the two civil process reform acts: the one reforming the new Code of Civil Procedure, and the law instituting the Justice of the Peace.

Plan to reform the administration of justice in general

113. The Ministry of Justice tabled before the Council of Ministers meeting on 5 July 1996 three bills to introduce wide-ranging reforms in the administration of justice, all of which were approved by the Cabinet, with the following purposes: (a) to institute separate sections to deal with the backlog of civil cases awaiting hearings; (b) to broaden the powers of the Justice of the Peace to deal with criminal offences of lesser social concern; (c) to enable persons imprisoned for serious criminal offences to be tried using video-conferencing techniques.

The civil process in general

114. As a result of increased litigation, the number of cases filed and pending has risen almost everywhere, creating further delays. The average time taken to complete a civil case at first instance can vary from almost 2 years (616 days) before the Pretura Courts to 3½ years (1,261 days) before a court of first instance. Those who manage to obtain a final judgement must

then embark upon a complex process for its execution, full of obstacles and of uncertain outcome. After this, as in the case for eviction orders, the order may not be carried out until certain administrative procedures have been completed. This is not only a chronic shortcoming of the whole system, but it is becoming increasingly more serious when one considers that in the past 10 years the number of procedures completed each year has risen (from 731,835 to 1,055,857), as has the number of judgements (from 295,033 to 411,575), despite which the number of cases pending has doubled to over 3 million.

115. Fortunately, the first results from the Justice of the Peace courts are positive and all the public prosecutors and State attorneys have favourably greeted the institution of the Justice of the Peace, even though there is a unanimous request for the court offices to be equipped with new appropriate material facilities and staffing structures, even though the original expectations had been to have a judge who was closer to the general public, in more streamlined and more decentralized offices in the large towns and cities, not subject to bureaucratic procedures and required to dispense justice in a much more simple manner.

116. The first results on the work of the JPs in their new offices are still very partial, but seem to be encouraging because they seem to show that the effect of decongesting the ordinary court offices has already begun.

117. From a number of samples collected, which appear to be significant because they relate to major offices such as the Rome office, between 2 May 1995 when the law establishing the Justice of the Peace came into force and the end of 1995, about 36,000 cases were laid before the Rome Court of First Instance compared with over 61,000 in the same period last year, a reduction of 42 per cent. Conversely, in the first four months of the year, before the Justice of the Peace was officially instituted, cases had increased over the same period in 1994. The number of cases before the Civil Pretore Court in Rome increased much less in 1995 than the number of cases before the Court of First Instance, namely only 7 per cent compared with 1994: this is an evident sign that since the institution of the Justice of the Peace a great deal of work has been transferred from the Court of First Instance and the Pretura Court taken together, to the new Justice of the Peace court, before which 25,000 cases were brought in the city of Rome alone at 31 December 1995.

118. Lastly, there has been a progressive deterioration in the state of the labour courts, largely due to the fact that ordinary courts, following privatization, now have jurisdiction to rule on labour relations involving public employees. As a result of their new status a large number of labour disputes have arisen, and a great many cases have been filed that have seriously interfered with the sound operation of the labour tribunals.

119. One of the oldest causes of the malfunctioning of the Italian courts, which has never been removed and which raises problems of the judicial system itself and jurisdictional problems as well, is the irrational nature of the number and the distribution of the judicial offices: today, following the institution of the Preture Circondariali (districts) Courts, the irrational distribution and numbers mainly refer to the courts of first instance. The 164 circondari of the Italian courts of first instance vary very widely in

terms of area, number of inhabitants, and the volume and type of work. There are small courts and other courts in large towns that suffer from overcapacity.

120. This is a long-standing problem, and equally long-standing is the failure of all previous attempts to remedy the situation, despite reiterated government commitments to this end. It is to be hoped that the reorganization of the Pretura Courts on a district basis (Law No. 30 of 1 February 1989) may set in motion a more organic restructuring following the provisions of article 41 DP No. 449 of 22 September 1988 (containing provisions to adjust the judicial order to the new criminal process) where it refers to the date of entry into force of law to reform the districts of ordinary courts of first instance. Today, with the changes that have been introduced regarding the civil criminal jurisdiction of the courts of first instance and the Preture Courts, a radical overhaul is now needed in order to deal in a coordinated manner with the whole problem of the judicial districts and the allied problem of unifying all the first instance courts.

121. The court of first instance has now changed its features, having lost its first instance jurisdiction in the civil process and the second instance jurisdiction in the criminal process. At the same time there has been a tendency to make more use of a judge sitting alone in courts of first instance, by either transferring jurisdiction to the Preture judge, as has happened with regard to labour disputes and criminal trials, of which 80 per cent are now heard by the Preture judge, and by introducing the system of a judge sitting alone to hear civil cases in addition to a full bench. Unifying Preture Courts and courts of first instance, which would be beneficial to the Italian justice system for many reasons (one only has to think of the advantage of concentrating cases in the offices and the disappearance of many questions regarding jurisdiction and competence), will finally make it possible to rediscuss the redistribution of the judicial offices and overcome the provincialism which could not be overcome before, and to plan a rational and more widespread distribution of the single judge of first instance in the local territory, by breaking up the badly functioning offices that are oversized.

The criminal process

122. The Public Prosecutor in the preliminary investigations. With regard to the effectiveness of procedures and guaranteeing the right to self-defence, a number of recent judgements of the Constitutional Court have clarified the nature and the trial function of the Pubblico Ministero (State Attorney or Public Prosecutor). In particular, Judgements No. 88/1991, No. 462/1993, No. 463/1993, No. 464/1993, and the most recent unambiguous Judgement No. 420/1995, which defines the Pubblico Ministero as being solely responsible for investigations for the purpose of the mandatory institution of criminal proceedings. It requires independence of all other judicial authorities, and stipulates that the role of the Pubblico Ministero is not merely that of a prosecutor, but as a mandatory organ of justice required to gather all the evidence which is relevant to enable a just decision to be taken, including evidence in favour of the accused. These definitions have finally put an end to all controversy regarding the relationship between an accusatorial system and a system under which criminal proceedings are mandatory and not at the

discretion of prosecution authorities, which some authors believe to be incompatible, making it quite clear that the accusatory system does not mean that the Public Prosecutor is always obliged to proceed, and that he may refrain from instituting proceedings when the evidence so requires.

123. In accordance with the Constitution, the Code unambiguously defines the Pubblico Ministero as an independent judge, and therefore bound only by law, which makes it natural for the court to check any request the Pubblico Ministero may make for a nolle prosequi order. The powers conferred on the PM for the purposes of seeking the truth must be offset by appropriate guarantees to the defence which is essential even in the preliminary investigation, pre-trial phase, because this contributes towards making error less likely. However, it is not a question of harmonizing the demands of the defence of society with guarantees of the defence of the person, but of pursuing the former via the latter. Individual protection is ensured by guaranteeing the defence every possibility to rebut the charges of the prosecution, not by reducing the powers of investigation of the PM. In short, it is pointless to try to protect the rights of defence by preventing or hampering the identity and the conviction of guilty parties.

124. These remarks also refer to the recent Law No. 332 of 8 August 1995 already mentioned above and illustrated in another part of this report, whose intention to enhance the role of the defence counsel and the defence's own investigations cannot fail to be welcomed. However, this is not the case with the tendency to restrict the powers of investigation of the investigating magistrate by prohibiting him from interrogating a person in a state of preventive detention before the judge interrogates him. On the one hand, this delays the investigations and, particularly when it is a matter of urgency, it runs the risk of transforming a questioning into an investigation which, in the case of the judge, has the sole function of guaranteeing the rights of the accused. This therefore reduces the impartial role that the judge for preliminary investigations should have instead of being strengthened as most people would prefer. Greater recognition is now given to the defence investigations, as a result of the incorporation of article 38 of the Rules of Implementation of the Code of Criminal Procedure, even though, in the matter of the powers, forms, documentation, and the use thereof, there is still a great deal of room left open to interpretation in the light of case law and judicial practice.

125. The state of crime. First of all, between 1 July 1994 and 30 June 1995 2,806,542 crimes were reported, an increase of 3.6 per cent, of which 1,707,177 were thefts. There is a trend towards a slight fall in homicides (2,751, a reduction of 4.7 per cent), robbery (48,055, a reduction of 12.3 per cent) and extortion (7,713, a decline of 5.3 per cent). Great concern has been raised by the resumption of kidnappings in Sardinia, fortunately ending with the freeing of the hostages in some instances. Only 18.2 per cent of all reported indictable crimes punishable with imprisonment have resulted in convictions. The percentage rises in the case of murder to 39.6 per cent, but only stands at 14.2 per cent for robberies and 2.7 per cent for theft. As a result of having decriminalized certain offences, the number of minor crimes punishable with non-custodial sentences are fewer than crimes for which imprisonment is provided: 1,958,384, or 41.1 per cent.

126. The data on the courts are as follows: 3,730,870 cases are pending before all the Italian courts, both awaiting proceedings to commence and those awaiting judgement, at 30 June 1994; 9,315,119 cases were on the case lists of all the courts during the following 12 months, of which 4,764,792 were new cases that had been filed with the prosecutors. Of a total 13,045,989 cases dealt with during the year, 9,017,149 were disposed of, including cases transferred from the prosecuting offices and the judges' offices, and between different judicial offices at various phases of the criminal procedure.

127. The criminal organizations operate in the traditional areas: arms-trafficking and drugs-trafficking, closely linked with the most ferocious international gangland organizations; contraband; moneylending; extortion; crimes against the public administration, mainly with regard to public works and waste disposal. In Italy careful watch is being kept on the increasing spread of foreign criminal organizations, particularly from the Orient, which mainly deal in drug-trafficking, with the Chinese mafia taking an ever-more-prominent part.

128. The National Anti-Mafia Directorate has proven to be extremely useful in dealing with organized crime. The continuity of the links and information flows which has been established between the district prosecutors' offices thanks to the Directorate has made it possible to exploit specific experience with different local situations, while obtaining an overall view of crime as a whole, its breakdown and the mobility of the various associations around Italy, with a further positive effect that investigatory plans are now becoming standardized throughout the country when dealing with criminal acts following a single pattern.

129. These functions, expressly provided by article 271 bis of the Code of Criminal Procedure, have mainly been implemented by applying to the district prosecutors' offices of magistrates from the National Directorate (68 times, for a total of 1,507 days), whose contribution to the investigations has always proven decisive. Particular care has been devoted to new areas of action for organized crime, and the increasingly widespread ramifications. Relations have been strengthened in this connection with other State institutions such as the Anti-Money-Laundering Section of the Ufficio Italiano Cambi (Exchange Office). Furthermore, relations have been established with the judicial offices of other countries, in the knowledge that in order to effectively combat organized crime it is essential for all the States concerned to work together.

130. Drug-trafficking has always constituted a major area of crime (crimes have increased by 23 per cent) and this is one of the areas where organized crime is most active. Since Italy is also an area of transition and a place in which the raw materials from the Middle and Far East and Latin America are refined, in close connection with criminal organizations in Italy and those that control the production of the raw materials, it is not possible to combat the phenomenon merely within Italy, but the legislation should become standardized so that the economic and financial interests of the criminal organizations can be attacked outside the countries in which they operate.

131. A new law to prevent moneylending. Law No. 108 of 7 March 1996 (Provisions Governing Money-Lending) is an innovation for the Criminal Code

with respect to the crime of moneylending in order to make it more suitable for combating this crime in all its gravity and extent at the present time, and which is now taking on new characteristics.

132. In particular, the former definition of "money or some movable asset" has been replaced by the wording "money or some other utility", to include not only real estate, but also what is known in Italian law as real usury, namely repaying the money borrowed by providing services or professional activities.

133. The new Law has abolished the requirement that one of the elements of the crime should be profiting from a state of need of the borrower. In the case of an interest-bearing loan, usury is committed whenever the interest rate is in excess of the threshold rate (to be established by law) which eliminates earlier difficulties regarding the taking of evidence; below this interest rate usury exists where the rate is disproportionate to the service provided or the loan given, and proof exists that the usurer has profited from the state of economic or financial difficulty of the victim.

134. Reference to the state of need (but without requiring the need to show exploitation) is also an aggravating circumstance with a special effect. The maximum period of preventive detention has been raised to six years.

135. Trial and procedural guarantees for acts which are punishable with the death penalty by a foreign jurisdiction (Judgement of 25-27 June 1996 of the Constitutional Court). With regard to procedural guarantees for acts for which the death penalty is provided in a foreign jurisdiction, the Constitutional Court recently issued a judgement on 25-27 June 1996, declaring to be unconstitutional article 698 (2) of the Code of Criminal Procedure (which provided that if the death penalty is provided in the jurisdiction of the State requesting extradition, the extradition can only be granted if that State provides assurances, deemed adequate both by the courts and by the Ministry of Justice, that the death penalty will not be passed on the defendant, and if it has already been passed, that it will not be carried out) and Law No. 225 of 26 May 1984 (ratifying and implementing the extradition treaty between the Government of the Italian Republic and the Government of the United States of America, signed in Rome on 13 October 1983) in the part implementing article IX of the aforementioned extradition treaty.

136. The Court firstly observed that the prohibition of the death penalty is particularly important - comparable to that of punishments contrary to the sense of humanity - in the first part of the Italian Constitution. Introduced in article 27 (4), it underlies a principle which in many ways may be called an Italian principle which forms part of the constitutional system as an extension of the guarantee of the fundamental right to life, which is the first of the inviolable human rights guaranteed by article 2.

137. The Court added that the absolute nature of this constitutional guarantee impinges on the exercise of power vested in all public servants of the republican system, and in this case on the powers of implementing international cooperation for the purposes of mutual judicial assistance, while article 27 (4), in the light of article 2 of the Constitution, is an essential criterion for assessing the constitutionality of the general rule

regarding the granting of an extradition order (art. 696 (2) of the Code of Criminal Procedure) and the laws implementing international extradition and judicial assistance treaties.

138. The Constitutional Court finally observed that the procedure set forth in article 698 (2) of the Code of Criminal Procedure hinges on a twofold examination of the individual case carried out by the courts and by the Ministry of Justice regarding the sufficiency or adequacy of the guarantees provided. Extradition may therefore be granted (or denied) following the assessments made by the Italian authorities on each individual request, and carrying out investigations within the limits indicated. In theory, the advantage of this solution is that the requested State can implement a flexible policy, which can be adapted in time according to criminal policy considerations; but in the Italian system, where the death penalty is prohibited by the Constitution, the wording "adequate assurances", for the purposes of granting extradition for crimes for which the death penalty is provided in the foreign jurisdiction requesting the extradition, is not constitutionally admissible, because the prohibition contained in article 27 (4) of the Constitution, and the values underlying it - and primarily the essential protection of human life - require that an absolute guarantee be given.

139. Referring to these constitutional principles the Constitutional Court therefore declared these aforementioned provisions to be unconstitutional, stating that the remedy proposed by article 9 (3) of the Code of Criminal Procedure remained applicable, in application of the alternative obligations on the State (to hand over a criminal or impose a punishment): at the request of the Minister of Justice, persons found guilty of crimes committed in a foreign jurisdiction for which the penalty is at least three years' imprisonment are to be punished under the terms of Italian law whenever extradition has not been or may not be granted.

Article 15

Cooperation with the International Tribunal for the Former Yugoslavia

140. In this connection we would mention Decree-Law No. 544 of 28 December 1993 enacted as Law No. 120 of 14 February 1994, providing provisions regarding cooperation with the International Tribunal. Under this measure, the Italian Government is obliged to cooperate with the International Tribunal in compliance with Security Council resolution 827 (1993) of 25 May 1995 and the Statute of the Tribunal adopted by the same resolution. Law 120/1994 also provides a contribution to the International Tribunal and the Commission of Experts set up by the Security Council under resolution 780 (1992) of 6 October 1992, which was 3 billion lire for the year 1994.

141. The Law also contains a number of provisions regarding the transfer to the International Tribunal of all criminal proceedings before the Italian courts in the matter of cases for which the International Tribunal is prosecuting persons for the same crimes as the Italian court, provided that the acts fall within the territorial and temporal jurisdiction of the International Tribunal (sect. 3) and the subsequent reopening of proceedings

in Italy (sect. 4), while any person who has been convicted by the International Tribunal may not be retried by a criminal court in Italy for the same crime. If, despite this, the person is once again prosecuted, the Italian judge at every instance and every stage in the process must acquit the defendant or declare that proceedings may not continue, and give the reasons therefor in the judgement (sect. 5). The judicial authorities are also under an obligation to promptly inform the International Tribunal of any persons whose names have been entered into the crime book provided by article 335 of the Code of Criminal Procedure in relation to alleged crimes for which the concurrent jurisdiction of the International Tribunal is deemed to subsist (sect. 6).

142. Law No. 120/1994, lastly, provides for the acceptance of judgements issued by the International Tribunal (sect. 7), the enforcement of the penalty (sect. 8), procedures relating to pardons (sect. 9), judicial cooperation (sect. 10), handing over the accused (sect. 11), the application of preventive measures for the purposes of handing over suspects (sect. 12), the provisional enforcement of preventive measures (sect. 13) and the role of non-governmental organizations (sect. 14).

The transformation of minor crimes into administrative wrongs

143. One of the most recent novelties in Italian legislation for the purposes of this article is Law No. 561 of 28 December 1993 which transforms minor crimes into administrative wrongs. Essentially, this Law transforms into administrative wrongs a number of minor crimes relating to: (a) priority with regard to the purchase and sale of motor vehicles; (b) lotteries and draws in general; (c) lists of protested bills of exchange; (d) reporting accidents; (e) taxation of cigarette lighters; (f) taxation of gas lighters for domestic use; (g) radioelectric facilities requiring authorization; (h) rail transport; (i) lifts and hoists; (j) mineral oils; (k) the real estate market. The Law also contains a number of provisions regarding offences against the Maritime Code, replacing certain articles of the Maritime Code regarding the unlawful occupation of government land, and failure to observe the limits of private property (art. 1161 of the Maritime Code), and failure to comply with police rules (art. 1174).

The reform of the penalties in the Consolidated Public Security Act

144. Furthermore, we would refer to Law No. 562 of 28 December 1993, delegating Parliament to reform penalties contained in the Public Security Consolidation Act (approved by Royal Decree No. 773 of 18 June 1931) and allied and complementary provisions, in accordance with certain principles and guidelines.

145. Law No. 562/1993 requires the Government to convert a number of minor criminal offences into administrative wrongs in relation to acts of a less serious and less socially threatening nature. In particular the Law requires the Government:

(a) To impose an administrative fine in respect of these decriminalized offences of not less than 1 million and not more than 6 million lire for offences committed in respect of performing activities without a

licence or authorization, ensuring that these wrongs require the authorities to issue measures ordering the activity to cease, within a time to be established, when it is carried out in violation of the rules, and that failure to comply with this measure constitutes an offence punishable under article 650 of the Criminal Code;

(b) To provide an administrative fine of not less than 300,000 and not more than 2 million lire for all other wrongs committed, with a possibility of an accessory administrative penalty suspending offenders for up to three months from performing their activities if they fail to comply with the law or the instructions issued by the authority;

(c) To transform into administrative accessory penalties the penalties already provided for the decriminalized minor crimes;

(d) To extend the decriminalization measure to cover all activities performed without a licence or permit even in the cases of failure to comply with the law or the instructions of the authorities after having acquired the licence or the authorization.

146. The Government adopted these measures with Decree-Law No. 480 of 13 July 1994 (reform of the penalties provided by the Public Security Consolidated Act approved by Royal Decree No. 733 of 18 June 1931).

Article 17

Computer crime

147. Law No. 547 of 23 December 1993, containing amendments and supplementary measures to the Criminal Code and the Code of Criminal Procedure in relation to computer crime provides criminal penalties for hacking into a computer system or network, unlawfully holding or disseminating codes or passwords to gain access to computer or telematic systems, and for intercepting computer or telematic communications.

Data protection

148. Lastly, with regard to protection of data on workers, section 8 of Law No. 300 of 20 May 1970 (better known in Italy as The Workers Charter) prohibits employers from investigating the political, religious or trade union opinions of their workers, and in general on any matter which is irrelevant for the purposes of assessing their professional skills and aptitudes.

149. With regard to the general public as a whole, data protection is provided by Law No. 121 of 1 April 1981, which prohibits the Department of Public Security (one of whose tasks is to collect data of use for the purposes of public order and public security, and for the prevention and punishment of crime) from collecting information and data on citizens solely on the grounds of their race, creed or political opinions, or their endorsement of principles of trade union movements, cooperatives, welfare movements or cultural movements, and their lawful activities as members of legally established organizations in any of these sectors. Furthermore, access to the Computer

Centre is restricted, and the dissemination of the information collected is prohibited; it may only be used for the purposes of public security as provided by the law.

150. With regard to the collection of data by other departments of Government, companies, associations or private individuals, the same Law No. 121/1981 provides that anyone who establishes or holds magnetic archives for any purpose whatsoever containing data or information of any kind whatsoever relating to Italian nationals, is required to communicate the fact to the Ministry of the Interior.

Article 18

Religious freedom

151. With regard to religious freedom, Italy has moved further to guarantee equal freedom to all the various religious denominations other than the Catholic Church. It has also carried out a survey of these religious denominations in order to have a better understanding of them in order to protect them according to Italian law. As noted by the Council of Europe in its final report on the Project on Intra-Community Relations, one of the most important aspects in relation to immigration is religion.

152. It should be recalled that the Constitutional Court reiterated the supreme and fundamental principle, in Judgement No. 149 of 1995, that the Italian State is secular in character, and in the same year, in Judgement 440, established that the numerical size was irrelevant when making constitutional judgements in relation to the equality of religions, stating that the criminal law rule punishing blasphemy must be interpreted as referring not only to the Catholic faith alone, but to all the religions practised by the national community in which different faiths, cultures and traditions now coexist.

153. As a result of the large inflow of immigrants into Italy in recent years, religious denominations have been introduced which had hitherto been little known. In Italy there are about 350 cults other than the Catholic religion, including religious denominations proper, movements and miscellaneous cults. The data acquired by this survey will be broadly publicized, taking account of recommendation 1178 (1992) adopted by the Parliamentary Assembly of the Council of Europe adopted on 5 February 1992 regarding new religious movements and sects, expressing concern in relation to certain problems regarding their activities and requesting member States to provide information and the legal problems connected with them, and to carry out a wide-ranging fact-finding survey into the nature and the activities of all these religious organizations.

154. Within the framework of this problem, Italy intends as soon as possible to set up a National Observatory on Religious Freedom, which was warmly welcomed by the United Nations Human Rights Committee when the Italian report on the application of the International Covenant on Civil and Political Rights was last considered.

155. This is even more necessary today in relation to the imminent debate on the initial report by the Italian Government on the implementation of the

Convention on the Rights of the Child, which became effective in Italy under Law No. 176 of 27 May 1991. It has been pointed out that this Observatory would be responsible for drafting and disseminating studies and documents which would provide more comprehensive information on the rights enshrined in the legal system regarding religious freedom, and hence with regard to minors in particular.

156. In 1995 a book was published by the Directorate General for Religious Affairs at the Ministry of the Interior, in conjunction with the Department for Information and Publishing of the Prime Minister's Office, entitled Religious Freedom in Italy. This work is now being disseminated as it is essentially intended for publicity purposes in an area that is perhaps little known and little dealt with, but which is of undoubted importance in order to gauge a country's level of freedom and democracy.

157. Lastly, we recall that since 1985 the Office of the Prime Minister has had two governmental commissions on this subject. The duties of the Commission for the Implementation of Legislation under the Concordat have subsequently been extended to cover all problems relating to freedom of conscience and freedom of religion. This Commission produced a bill on religious freedom in 1993 which was approved by the Government on 13 September and updated in December 1995 and will shortly be placed before Parliament. The other commission deals with the preparation of agreements with non-Catholic denominations: after the agreements with the Valdese and Methodist Churches, the Adventist Churches and the Pentecostal Assemblies of God and the Union of Jewish Communities concluded at the end of the 1980s, on 20 April 1993 an agreement was reached between the Government of the Italian Republic and the Lutheran Evangelical Church in Italy, in implementation of the last paragraph of article 8 of the Constitution, even though it has not yet been enacted.

158. Under Law No. 409 of 12 April 1993, the Government concluded the completion of the agreement between the Government of the Italian Republic and the Tavola Valdese, in implementation of article 8 (3) of the Constitution, according to the agreement concluded on 25 January 1993, integrating the one previously signed on 21 February 1984 and approved by Law No. 449 of 11 August 1984.

159. Lastly, Law No. 116 of 12 April 1995 governed relations between the Italian State and the Christian Baptist Evangelical Union of Italy following an agreement concluded on 29 March 1993 between the Government of the Italian Republic and this denomination, in implementation of article 8 (3) of the Constitution. Section 8 of Law No. 116/1995 is particularly significant, relating as it does to religious education in schools, and providing that the school curricula should make provision for religious education not to be provided at times and in manners which cause discrimination between pupils, and to ensure that religious education is not provided in the course of the teaching of other subjects.

160. With regard to other religious denominations for which no agreements have been concluded, Presidential Decree of 23 February 1993 recognized the legal personality and approved the statute of the Church of Jesus Christ of Latter-day Saints, with its headquarters in Rome.

161. The provisions of Law No. 205 of 25 June 1993, converting and amending Decree-Law No. 122 of 26 April 1993, is also very important. This act provides urgent measures to prevent racial, ethnic and religious discrimination, and will be commented upon under article 20 of the Covenant.

162. There are also the provisions of Law No. 413 of 12 October 1993 regarding conscientious objection to animal experiments. Section 1 provides that any citizen who, for reasons of conscience, in the exercise of the right to freedom of thought, conscience and religion, recognized by the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, is opposed to violence against all living beings, may declare his/her conscientious objection to all acts connected with animal experiments. Section 2 of the Law also provides that such persons are not required to take a direct part in any activity or any intervention specifically and necessarily directed at experimentation on animals.

163. Lastly, a great many regional laws (which may be found in the Quaderni di diritto e politica ecclesiastica, which annually publish the provisions and the codes published by the Milan-based Centro Studi sugli Enti Ecclesiastici) have ensured the broad, specific and effective implementation of the Italian constitutional provisions and article 18 of the Covenant.

The case law of the Constitutional Court

164. Freedom of conscience and the right to religious freedom have been dealt with in judgements by the Constitutional Court.

165. In particular, in Judgement No. 195/1993 the Constitutional Court declared unconstitutional section 1 of the law enacted by the Abruzzo region, No. 29 of 16 March 1988, containing town planning provisions for religious buildings, in respect of the denominations whose relations with the State are governed under article 8 (3) of the Constitution. Section 1 limited the right to receive public grants to build places of worship awarded to the Catholic Church and to other religious denominations whose relations with the Italian State were governed by agreements concluded under article 8 (3) of the Constitution.

166. In Judgement No. 195/1993 the Constitutional Court ruled that the fact that a religious denomination has or has not concluded the agreement provided by the aforementioned article 8 (3) of the Constitution is not to be used as an element for discriminating in relation to the application of any measures to facilitate the exercise of the right to freedom enjoyed by Italian citizens. In particular, it stated that respect for the principles of freedom and equality must be guaranteed with reference to the same right of all the members of different religions or denominations to be entitled to government grants in order to enable them to practise their religion more easily. This was based on the right to exercise religious freedom, which includes the right to public worship, as established by article 19 of the Constitution, and hence to be able to have buildings open to public worship, including those of religious denominations which were recognized by the Italian system even though no specific agreement had been concluded with the Government. The Court also stated that it is not sufficient for the applicant to describe itself as a religious denomination, and that this must be verified in terms of

previous public recognition of the status of the applicant, or at least by the way in which it was viewed by the general public. This principle of the inadequacy of self-proclamation had already been indicated by the Court in Judgement No. 467/1992 in relation to the unrecognized association, the Turin-based Dianetics Institute, in respect of its tax position and particularly its liability for corporate tax and VAT.

167. There was also the recent judgement of the Constitutional Court, No. 149/1995, regarding the oath taken in the name of God in the civil process. It declared that article 251 (2) of the Code of Civil Procedure was partially unconstitutional because it was in contrast with articles 3 and 19 of the Constitution, which meant that the formula for the oath in the civil process needed reformulating. The Court ruled that freedom of conscience, particularly if related to a religious faith or belief, must be protected in the same proportion as it occupied to the absolute priority recognized on the scale of values enshrined in the Constitution, where freedom of conscience was absolute. With regard to the oaths taken by witnesses in the civil process, the Constitutional Court therefore confirmed that a different protection of the constitutional value of freedom of conscience had arisen in preparing to testify in both the civil and the criminal process. Unlike the witnesses in a criminal trial, witnesses in civil proceedings are not protected from serious scruples of conscience because of the internal conflict between their civic duty to contribute to ascertaining judicial truth and the moral duty to observe a religious imperative which they endorsed. The Court recognized that there was a difference in the protection of freedom of conscience afforded to a witness in a criminal trial and in a civil trial, and an unreasonable difference of treatment in relation to the protection of an inviolable human right, namely freedom of conscience, which demanded a uniform guarantee or at least a guarantee which was the same in every area in which it was practised. The unreasonable disparity of treatment with regard to the freedom of religious conscience was therefore removed in order to guarantee equal protection of the value of freedom of conscience in relation to the obligation incumbent on witnesses to tell the truth.

Respect for ritual obligations

168. In order to overcome the difficulties encountered by women belonging to the Islamic religion in obtaining an identity card from their municipal authorities owing to the requirement to present a photograph bareheaded, the Ministry of the Interior issued Ministerial Circular No. 09501399/15100/4571 of 14 March 1995. On the basis of the constitutional precept of freedom of worship and religion, this circular stated that applications for identity cards should be accepted provided that the photo annexed to the application showed a face with clearly evident features. It was recalled that in the 1987 Agreement between the Italian State and the Jewish communities, the possibility for Jews to swear in court with their head covered was also provided.

169. Lastly, the Chamber of Deputies is currently debating a government bill on the protection of the individual with respect to personal data processing, in which clause 5 (1) relates to personal data likely to reveal the racial and ethnic origin of the individual, or their religious, philosophical or other beliefs, creed or political opinions, as well as their membership of parties,

trade unions, political organizations or associations, religious or philosophical organizations, or their state of health and their sex life.

Article 19

170. On the subject of freedom of information, two recent initiatives have been taken by the Professional Association of Journalists. The first is the issue of a new code of self-regulation for journalists and publishers, based on the general principles of sound practice in disseminating information to the public and professional ethics. The second refers to a glossary of language which journalists must use when reporting news, including a special section containing language on human rights.

Article 20

The ratification of the International Convention against the Recruitment, Use, Financing and Training of Mercenaries

171. Under Law No. 210 of 12 May 1955 Italy ratified and implemented the above-mentioned Convention, adopted by the General Assembly on 4 December 1989. Law 210/95 provides two different definitions of a mercenary, and accordingly two different types of crimes as far as penalties are concerned, in accordance with article 1 of the Convention:

(a) Section 3 (1) provides a prison term of between two and seven years to anyone who is paid in cash or any other form of remuneration or who has accepted the promise thereof to fight in an armed conflict in a territory controlled in any way by any foreign State of which he is not a citizen, nor stably resident therein, without belonging to the armed forces of one of the parties to the conflict, or without being sent on an official mission as a member of the armed forces of a State not involved in the conflict;

(b) Section 3 (2) provides a prison term of between three and eight years for any mercenary taking part in any preordained and violent action intended to alter the constitutional order or violate the territorial integrity of a foreign State;

(c) Section 4 provides a prison term of between 4 and 14 years for anyone recruiting, using, financing, or training persons (mercenaries) in order to get them to commit any of the acts mentioned in section 3;

(d) Section 5 takes account of the possibility that actions that abstractly form part of the criminal offences examined above are performed with the lawful approval of the Government, in which case the offenders are not punishable;

(e) Section 6 implements article 9 of the Convention and notwithstanding the Italian jurisdiction over crimes committed within the national territory for which no express provision is required, it provides that Italian courts have jurisdiction to take cognizance of crimes committed anywhere by a citizen and by a foreign national provided that the latter is on Italian territory at the time. In both cases extradition is a possibility;

(f) Section 7 amends articles 244 and 288 of the Criminal Code, substantially increasing the penalties.

Urgent measures in relation to racial, ethnic and religious discrimination

172. The provisions introduced by Law No. 205 of 25 June 1993, which enacted with amendments Decree-Law No. 122 of 26 April 1993, provided very important urgent provisions relating to racial, ethnic and religious discrimination, which will be examined in the comments relating to article 26 of the Covenant. Specifically, the Law provides that save where the act constitutes a more serious crime, anyone disseminating in any manner whatsoever ideas based on racial or ethnic superiority or hatred and in any way incites others to discrimination and hatred, or to commit violence or acts of provocation to violence on racial, ethnic, national or religious grounds, shall be punished by between one and four years' imprisonment, which penalty shall be increased if the crime is committed through the press or other means of propaganda or at public meetings.

173. Law 122/1993 also bans any organization, association, movement or group whose purpose includes inciting discrimination, hatred or violence for racial, ethnic, national or religious reasons. Anyone taking part in these organizations or assisting them in their activities may, by the mere fact of participating or assisting them, be imprisoned for between one and five years, which is increased in the case of organizations which are intended to encourage violence.

174. Law 122/1993 also provides that for crimes punishable other than with life imprisonment, committed for the purposes of racial, national, ethnic or religious hatred or discrimination or to facilitate the work of associations whose aims include these, the penalty shall be increased from one third to one half, such that motives of ethnic, national, racial or religious hatred now constitute a specific aggravating circumstance to the crime. For crimes aggravated by this circumstance, prosecution is mandatory.

175. For a more thorough account of the issues covered by section 20 of the Covenant, we refer to the last report submitted by the Italian Government on the International Convention on the Elimination of All Forms of Racial Discrimination.

Article 23

176. With regard to the protection of the family, the Italian Government has instituted a specific Ministry for the Family. For further details on the status of Italian law and administrative practice on this subject, we refer to the initial report submitted by the Italian Government on the Convention on the Rights of the Child.

Article 24

177. In 1994 the Italian Government submitted its initial report on the Convention on the Rights of the Child which was debated by the Committee on the Rights of the Child on 30 October-1 November 1995.

The protection of disabled children

178. With regard to the protection of disabled children, in implementation of Law No. 289 of 11 February 1990 which introduced a monthly allowance for children suffering from civil disability, conditional upon attendance at specific outpatient centres or day centres, the persons in receipt of assistance from the Ministry of the Interior numbered 2,209 at 31 December 1992, 3,400 at 31 December 1993, 4,472 at 31 December 1994 and 7,008 at 31 August 1995.

179. The attendance allowance for civil invalids, which is governed in general by Law No. 18 of 11 February 1980 and Law No. 508 of 21 November 1988, was paid to the following numbers of minors: 35,467 at 31 December 1992, 35,799 at 31 December 1993, 35,951 at 31 December 1994 and 35,627 at 31 August 1995.

180. Fewer persons received the special attendance allowance for blind children and the communication allowance for children deaf from infancy (Law No. 508 of 21 November 1988). Lastly, with regard to the period prior to Law No. 508/1988, the Constitutional Court had already declared unconstitutional section 1 of Law No. 406 of 28 March 1968 in its Judgement No. 88 of 8-15 March 1933, where the Law failed to provide an attendance allowance for totally blind minors under the age of 18.

181. It should also be noted that Law No. 216 of 19 July 1991 providing "Primary intervention on behalf of individuals likely to be involved in criminal activities", to which detailed reference was made in the 1992 report, was refinanced for the three-year period 1994-1996 under Decree-Law No. 318 of 27 May 1994, enacted by Law No. 465 of 27 July 1994 in the amount of 32 billion lire for 1994 and 40 billion lire for 1995 and for 1996.

182. This recent Law has also introduced a number of procedural changes for issuing grants to organizations assisting children, in order to improve the quality of their projects, giving provincial and metropolitan committees of the public administration, including experts, the task of ascertaining the normal implementation of the projects being financed and the provision of technical assistance to ensure their sound implementation. Furthermore, the Prefect is given the power to keep special accounts of the sums credited for a further financial year in addition to the year provided by current State accounting legislation, in order not to hamper the successful completion of the projects already in progress.

183. Here are a few figures regarding the grants issued in 1992, 1993 and 1994 pursuant to section 2 of Law 216/91:

Year	Grant (billion lire)	No. requests	No. accepted
1992	50	2 187	582
1993	60	1 892	429
1994	32	2 799	301

Prevention of addiction in adolescence and assistance to disturbed adolescents

184. Over the past 10 years the General Directorate of Civil Services at the Ministry of the Interior has done a great deal to promote social policies for adolescents by carrying out research and surveys, setting up working groups and holding seminars and conferences on the subject. One of the most significant results of this work has been the book Progetto adolescenti (Juveniles' Project) published in 1985, containing proposals and methodological guidelines for administrators, officials and public and private operators. Since 1991 the Ministry of the Interior has set in motion a programme for the coordinated experimentation of the Progetti adolescenti approved by the Prime Minister's Office as part of a strategy to prevent drug dependency provided by the Consolidated Act No. 309/1990.

185. The general purposes underlying the programme are the following: (a) to support local projects already being implemented for juveniles, encouraging schemes designed to prevent addiction and difficulty in certain parts of the country; (b) to encourage the dissemination of the results of local experiments and to promote the development of similar schemes in other parts of the country; (c) to interact with projects in order to gradually incorporate common elements, so that the 1985 publication can be updated.

186. The national experiment has been carried out over a period of three years. The first year began on 1 September 1991 and finished on 1 August 1992. It consisted of a network of 18 Juvenile Projects that had been in operation for some time throughout Italy and with which links had already been established. The experiment had been carried out in particular in 18 zones scattered throughout Italy. The second year began on 1 September 1993 and concluded on 31 August 1994, and consisted of promoting and developing project-making with adolescents by the government departments concerned, involving youth movements and local social movements in 12 parts of southern Italy. The third year began on 15 September 1994 and concluded on 15 September 1995 and consisted of pursuing the work already undertaken in 16 of the 18 zones involved in the first year, and in assessing and producing materials summarizing the results of the whole three-year experience. During the course of the coordinated experimentation, great importance was given to the production of documentation with a twofold purpose of acquiring evidence and material for assessing the work completed, and also to provide instruments to ensure that the messages contained in them were given the maximum diffusion at all institutional levels, both public and private.

Protection of child workers

187. One of the most important novelties in Italian legislation protecting working minors was Law No. 499 of 6 December 1993 ("Enabling the Government to reform penalties regarding labour offences") which, for the purposes of this article of the Covenant regarding the protection of children at work, working mothers and homeworkers, committed the Government:

(a) To maintain criminal penalties with regard to safety at work and the psychological/physical condition of workers, providing for alternative

penalties to imprisonment of less than six months or to a fine of not more than 10 million lire, and in more serious cases posing a specific threat to health, providing for imprisonment only;

(b) To transform all the other crimes into administrative wrongs, by introducing fines not in excess of 5 million lire, and accessory administrative penalties for the accessory penalties of the decriminalized offences.

188. Following the enabling legislation under Law No. 499/93 mentioned above, the Government issued Decree-Law No. 566 of 9 September 1994 containing amendments to the penalties relating to child labour, working mothers and homeworkers and Decree-Law No. 758 of 19 December 1994 containing amendments to penalties relating to labour.

Juvenile delinquency

189. Juvenile delinquency remained more or less around the levels of previous years throughout the period considered. However, there has been a worrying increase in cases of children involved in gang-related crimes and in some cases involuntary homicide (in the district of Catania there has been an increase of 350 per cent) and an increasing frequency in the use of children for trafficking small amounts of drugs, notwithstanding that the main type of crime committed by children, particularly travellers and non-EEC nationals, is against property. The instruments available to the juvenile courts, which vary up to nolle prosequi orders because of the petty nature of the offence or the fact that the crime has lapsed, including the most serious crimes, are revealing their inadequacy after a long positive trial period, because they are not accompanied by appropriate re-educational measures or support measures by specialized structures.

Right to citizenship

190. With regard to the right to acquire citizenship, Law No. 91 of 5 February 1992 partially amended and added new provisions to the previous Laws No. 55 of 13 June 1912, No. 123 of 21 April 1983 and Law No. 180 of 15 May 1986. Law 91/1992 enacts and develops the principles relating to sex equality and equality between spouses and the recognition of the individual will to acquire or lose citizenship by adoption or affiliation.

191. In particular, Law 91/1992 recognizes the right to acquire Italian citizenship by birth in the case of the child of an Italian national mother or father (sect. 1 (1) (a)); anyone born of unknown or stateless parents in Italy, or any child who does not take the citizenship of its parents according to the law of the State to which the parents belong (sect. 1 (2) (b)). Citizenship by birth is also given to children of unknown parents found on Italian territory unless it is proven that the child has another nationality (sect. 1 (2)). Minors may also acquire Italian citizenship after recognition or court declaration of filiation (sect. 2), as may a foreign minor adopted by an Italian citizen (sect. 3), a foreigner or stateless person whose father or mother or one of whose direct ascendants to the second degree was an Italian citizen by birth (sect. 4), the spouse, whether foreigner or stateless, of an Italian citizen who has lawfully been resident at least six months in Italian

territory, or after three years after the date of marriage if the civil effects thereof have not been dissolved, annulled or ceased to exist, and if they are not legally separated (sect. 5), and the minor children of persons acquiring or reacquiring Italian citizenship (sect. 14).

192. Lastly, there is Law No. 218 of 31 May 1995 reforming the Italian system of private international law which has already been examined in the commentary to article 2 of the Covenant. The new rules include provisions governing filiation (sect. 33), legitimization (sect. 34), recognition of natural children (sect. 35), relations between parents and children (sect. 36), the jurisdiction over filiation (sect. 37). A separate chapter is devoted to adoption (sects. 38-41), the protection of incapacitated persons and the obligation to provide for them (sects. 42-45), and succession (sects. 46-50).

Article 25

Voting rights for EU citizens

193. It should be noted, firstly, that under Decree-Law No. 408 of 24 June 1994, enacted as Law No. 483 of 3 August 1994, Italy received the Directive 93/109/EC adopted by the European Union Council on 6 December 1993. This decree introduced into the Italian legal system the principle of citizenship of the Union according to which citizens of the Union living in a member State of which they are not nationals may, since the last elections to the European Parliament, stand as candidates and vote for candidates to the European Parliament for those elections alone. This has removed a de facto barrier to the exercise of voting rights by these citizens who had previously been required to return to their countries of origin in order to vote; it is also a way of implementing the principle of European integration, enabling European Union citizens to express their own "European" vote in the country in which they live and work.

194. The recently issued Decree-Law No. 197 of 12 April 1996, implementing Community Directive 94/80/EC relating to the procedures for the right to vote and eligibility to stand as candidates in municipal elections by European Union citizens living in a member State of which they are not nationals, enables citizens of the Union living in Italy (there are 115,000 such persons aged over 18) to vote for municipal officials. Such citizens are also allowed to be elected as councillors and even to be appointed to the municipal government (giunta), but they are not eligible to become mayor or deputy mayor. Foreign nationals wishing to exercise these new rights must submit an application to this effect to the mayor of their municipality of residence.

Voting by persons unable to walk

195. Law No. 15 of 15 January 1994 provided measures to enable persons unable to walk to vote. This measure forms part of the measures to eliminate "architectural barriers" which hamper the voters' exercise of the right to vote, which restricts their constitutional rights. In particular, this Law provides that voters who cannot walk may vote in a different polling station in their own municipality if the one with which they are registered is not accessible by wheelchair, where the other polling station does not have architectural barriers and is equipped in order to enable persons unable to

walk to read the lists of the candidates, to vote in comfort and in total secrecy, and also to be an official on duty at the polling station or a representative on the voting lists.

196. Another important measure is the initiative on the part of mayors of individual municipalities who, at the recent local and general elections, set up a special transport service to enable any voters who are unable to walk to be transported in specially equipped vehicles, together with other disabled people, from their own home to the polling station. This service, which is completely free of charge, is at the disposal of voters unable to walk who so request by telephone.

Streamlining of administrative procedures

197. Lastly, we mention Law No. 273 of 11 July 1995 enacting with amendments Decree-Law No. 163 of 12 May 1995 providing urgent measures to simplify and streamline the administrative procedures to improve the efficiency of the public administration. For the purposes of this particular article of the Covenant, the following provisions are relevant:

(a) Section 2 of Decree-Law No. 163/1995, which refers to the quality of public services, requires a decree to be issued by the Prime Minister setting out the general frame of reference for public service charters. These decrees must take account of the Code of Conduct for Civil Servants adopted by decree of the Minister for the civil service. The public service charters are to be issued by the service providers within 120 days of the date of issue of these decrees, on the basis of the principles set out in the directive and the general benchmark document. These charters must be given adequate publicity among the general public and must be communicated to the Department of the Civil Service;

(b) In section 3, which relates to the public relations offices, an addition is made to article 12 of DLGS No. 29 of 3 February 1993 with paragraphs 5-bis-ter-quater, as subsequently amended. These provide the public relations director and the personnel of his office with greater technical discretion, and provide a number of personal incentives for the organization of the office in order to improve the services;

(c) Section 3-bis-ter-quater-quinquies relate to the streamlining of the administrative procedures and hence amend and expand Law No. 241 of 7 August 1990 as subsequently amended. In particular, section 3 bis adds subsection 2 ter to section 14 of Law No. 241/1990 relating to the services conference and provides that the provisions of subsections 2 and 2 bis (procedures, subject matter for convening the services conference, the resolutions adopted thereat) may also be applied when the work of a private individual subject to permission is to be issued by different public authorities, and in this case the conference may be convened, even at the request of the party directly concerned, by the government department responsible for protecting the prevailing public interest;

(d) Section 3 ter provides remedies for failure to comply with the terms, and specifically makes it possible for the interested party to address the general manager of the unit responsible for the procedure after the deadlines established by section 2 of Law No. 241 have expired without any

results, and the general manager must directly act within 30 days thereafter. If the measure falls within the powers of the general manager, the request is submitted to the minister who is responsible for ascertaining whether the conditions obtain for acting in lieu of the administrative authority, and in such a case within 30 days of taking over this authority the minister is required to act. Failure to comply with the deadline provided in section 2 of Law No. 241 gives rise to investigations in order to impose penalties against the general managers, managers and other officials pursuant to article 20 (9) and (10), and article 59 of DLGS No. 29/1993, as subsequently amended;

(e) Section 3 quater provides the measures to apply to administrations that have not adopted the regulation to institute the internal audit service or the assessment unit. These provisions only apply until this regulation is issued;

(f) Section 3 quinquies adds to section 11 (1 bis) of Law No. 241, and provides that the official responsible for the procedure may set down a timetable of meetings to which the interested party is invited together with any other interested parties in order to reach agreements regarding the discretionary part of the final measure or, in the cases provided by law, in place of it.

Article 26

Urgent measures relating to racial, ethnic and religious discrimination

198. In order to pre-empt and prevent the degeneration of what are still only isolated episodes, and to deal with forms of racial intolerance by law to deal with this phenomenon which has emerged in Italy over the past few years, on 19 December 1992 the Government tabled before Parliament Bill No. 2061/C providing urgent measures in the matter of racial, ethnic and religious discrimination. This new legislation forms part of Italy's tradition to steadfastly defend the right of people to be protected from discrimination on the grounds of race, language, religion, and political opinion, based on the fundamental principles of the Italian Constitution and by virtue of Italy's accession to international conventions on this subject, and under Law No. 101 of 8 March 1989 containing provisions to regulate relations between the State and the Italian Union of Jewish Communities.

199. After tabling the bill before Parliament, in consideration of the time it would take in order for the bill to become law, and also considering the urgent need to complement or amend current legislation governing racial, ethnic and religious discrimination for the provision of more effective means of preventing and pre-empting intolerance and violence based on racial hatred or anti-Semitism, the Italian Government converted the bill into Decree-Law No. 122 of 26 April 1993 which was enacted as Law No. 205 of 25 June 1993. Decree-Law No. 122/93 contains specific provisions relating to propaganda to encourage racial hatred or discrimination, creating a number of crimes and laying down their penalties. There now follows a summary of the provisions of each article in this new law.

200. Section 3 of Law No. 564 of 13 October 1975, by which the Italian Parliament authorized the ratification of the International Convention on the Elimination of All Forms of Racial Discrimination, was in response to Italy's

obligation under article 4 of the Convention and introduced into Italian law the specific crimes provided by section 3 (a) and (b) and specifying the penalties for them. Section 1 of Decree-Law 122/93 partially amends section 3 of Law No. 564. With regard to the crimes of disseminating racist ideas and incitement to violence and provoking violence, the law now provides that these crimes are not only racial hatred but also ethnic hatred; it is a crime not only to incite such hatred but also to commit acts of violence. The penalties provided for these crimes (imprisonment for one to four years) are increased if the crime is committed through the press or other forms of propaganda, or at public meetings.

201. With regard to racist organizations and associations, the new Decree-Law provides, in section 1, a more comprehensive set of provisions introducing the principle that penalties are increased for the leaders and the promoters of such racist associations and organizations. The provision is therefore amended to read as follows: "Every organization, association, movement or group whose purposes are to incite discrimination, hatred or violence for racial, ethnic, national or religious purposes is prohibited. Anyone taking part in such organizations, associations, movements or groups, or assists their activities, shall, by the mere fact of taking part in or assisting them, be subject to a penalty of between one and five years' imprisonment, or if one of the purposes of the organization, association, movement or group is to incite violence, the term of imprisonment is from between one and seven years. These penalties are increased for leaders and promoters of such organizations, associations, movements or groups."

202. Section 2 contains a number of preventive measures, extending Italian law governing mafia crimes to apply to all those who are deemed to be members of associations, movements or groups which advocate, threaten or use violence for the purposes of ethnic, racial or religious hatred or discrimination, and to all those who at public meetings demonstrate or display emblems or symbols which are proper to or usual in associations, movements or groups whose purposes encourage incitement to violence, discrimination or hatred for ethnic, national, racial or religious reasons.

203. Section 3 increases the penalty by between one third and one half for crimes for which the penalty is other than life imprisonment committed for the purposes of ethnic, national, racial or religious discrimination or hatred, or in order to aid and abet the activities of associations, movements or groups whose purposes include these.

204. Section 5 empowers the authorities to search and impound property, and in the case of a criminal conviction to confiscate real estate, whenever the author of any of the crimes relating to racial discrimination or hatred has used the premises as a meeting-place, store or haven, and to search and confiscate and impound emblems, symbols or propaganda material which is proper to or usual in associations, movements or groups whose purposes include incitement to violence or hatred on ethnic, national, racial or religious grounds.

205. Section 6 contains a number of provisions of a procedural nature, and provides, inter alia, that in respect of the crimes provided under section 3 above, criminal prosecution is automatic.

206. Section 7 provides that, in cases when there are well-founded reasons for believing that the activity of associations, movements or groups encourages the commission of racial crimes, the association, movement or group may be suspended or dissolved, with the resultant seizure of all its assets. In a circular of 28 April 1993 the Minister of the Interior drew the attention of the Ministry's personnel to all these provisions.

207. Decree-Law No. 122 of 26 April 1993 is complemented by DM No. 569 of 4 August 1994 adopting a set of regulations laying down the procedures for enforcing the accessory penalty of doing unpaid work on behalf of the community following a conviction for crimes relating to racial, ethnic, national or religious hatred or crimes of genocide.

Article 27

208. In general terms and with regard to the basic legislation to protect minorities, nothing new has occurred since the third report. However, it is useful to mention the further commitment, through interdepartmental meetings, to adopt a law for the global protection of the Slovene minority. A number of court judgements have increased the enforcement of these protective measures. With regard to religious minorities, we refer to the remarks under article 18 of the Covenant.

209. The Constitutional Court, in its Judgement No. 16/95 deposited on 19 January 1995, declared to be without foundation a claim of unconstitutionality in respect of article 15 (5) of Presidential Decree No. 574 of 15 July 1988 relating to the implementation of the Special Statute for the Trentino-Alto Adige region relating to the use of the German language and the Romansch (Ladino) language in court proceedings that had been raised by the Pretore judge of Bolzano. In its judgement the Court recognized that in the case of defendants belonging to the German minority language group, the courts were required, in order to guarantee the right to self-defence, an official defence counsel of the same language as the defendant in criminal proceedings, pursuant to article 26 of Presidential Decree No. 271 of 1989.

210. The Constitutional Court also issued Judgement No. 375/95, deposited on 25 July 1995, declaring to be unconstitutional Decree No. 81 of 24 March 1956 issued by the Government's General Commissioner which extended to the territory of Trieste Law No. 122/1951 and failed to take account of section 9 (2) of Law No. 122/1951. The result was an exception for the province of Trieste to the provision under which no municipality could be given a number of constituencies in excess of one half of the total constituencies in the whole province. In the municipality of Trieste, 21 of the 24 available constituencies were allocated. This decision, while not directly relating to the law protecting minorities, was nevertheless very important for the Slovene minority (the issue had been raised by the Administrative Regional Tribunal of Friuli Venezia Giulia to which a number of voters from the Slovene minority from the municipalities of Sgonico, Duino Aurisina, S. Dorligo della Valle and Muggia had applied), and was favourably welcomed by this ethnic group which considered the judgement to be an important affirmation of the principle of equality. As a result of this judgement, this ethnic group will have better representation on the Provincial Council.